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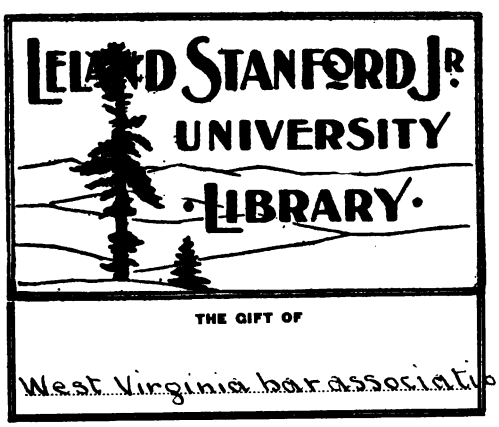
WEST VA. BAR ASSOCIATION

TWENTIETH ANNUAL MEETING

DEC. 29 AND 30, 1904.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PROCEEDINGS

of the

Twentieth Annual Meeting

of

The WEST VIRGINIA BAR ASSOCIATION

held at

Charleston, West Virginia

on

December 29th and 30th, 1904.

Edited for the Executive Council

by

W. G. PETERKIN, Secretary.

Parkersburg, W. Va.
THE STATE JOURNAL COMPANY
1905

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1905.

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Fairmont.

Vice Presidents,

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Second District:—IRA E. ROBINSON, Grafton.
Third District:—W. E. R. BYRNE, Charleston.
Fourth District:—W. E. HAYMOND, Sutton.
Fifth District:—A. D. PRESTON, Beckley.

Secretary,

WM. G. PETERKIN,
Parkersburg.

Treasurer,

W. N. MILLER,
Parkersburg.

Executive Council.

W. P. WILLEY, Morgantown.
B. M. AMBLER, Parkersburg.
HENRY M. RUSSELL, Wheeling.
C .W. DILLON, Fayetteville.
W. E. CHILTON, Charleston.

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J. J. JACOB,	J. D. EWING,	L. J. WILLIAMS,
B. M. AMBLER,	T. P. JACOBS,	JOHN BASSEL,
E. B. KNIGHT,	W. P. HUBBARD,	GEO. E. PRICE,
H. M. RUSSELL,	F. W. BROWN,	C. WOOD DAILEY,
W. P. WILLEY,	P. J. CROGAN,	W. W. BRANNON.
	D. C. WESTENHAVER,	

STANDING COMMITTEES.

Committee On Admissions.

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GEO. B. CALDWELL, Wheeling.
C. W. DILLON, Fayetteville.
W. E. HAYMOND, Sutton.
J. HOP WOODS, Philippi.

Committee On Judicial Administration and Legal Reform.

B. M. AMBLER, Parkersburg.
JOHN BASSEL Clarksburg.
W. P. HUBBARD, Wheeling.
E. W. KNIGHT, Charleston.
Z. T. VINSON, Huntington.

Committee On Legal Education.

ST. GEO. T. BROOKE, Morgantown.
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J .W. DAVIS, Clarksburg.
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Committee On Legal Biography.

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H. C. SIMMS, Huntington.
T. L. HENRITZE, Welch.
W. MOLLOHAN, Charleston.
P. J. CROGAN, Kingwod.

Committee On Grievances.

THOS. P. JACOBS, New Martinsville.
GEO. E. PRICE, Charleston.
H. B. GILKESON, Romney.
C. J. FAULKNER, Martinsburg.
S. V. WOODS, Philippi.

Committee On Banquet.

E. M. SHOWALTER, Fairmont.
F. T. MARTIN, Fairmont.
JOHN L. LEHMAN, Fairmont.
U. N. ARNETT, JR., Fairmont.
B. L. BUTCHER, Fairmont.

SPECIAL COMMITTEES.

Committee On Torrens Land System.

W. P. WILLEY, Morgantown.
THOS. P. JACOBS, New Martinsville.
EDGAR B. STEWART, Morgantown.
C. D. MERRICK, Parkersburg.
L. J. WILLIAMS, Lewisburg.
JAS. F. BROWN, Charleston.

Committee On Uniformity Of Legislation.

W. W. VAN WINKLE, Parkersburg.

Delegates To American Bar Association.

JAS. F. BROWN, Charleston.
W. G. BENNETT, Weston.
NELSON C. HUBBARD, Wheeling.

TWENTIETH ANNUAL MEETING

—OF—

THE WEST VIRGINIA BAR ASSOCIATION

CHARLESTON

December 29th and 30th, 1904.

FIRST DAY: MORNING SESSION.

The Association met on Thursday, December 29th, at 10 o'clock A. M., in the Federal Court room.

President Brannon: The first order of business, according to the arrangement of the Executive Council, is the enrollment of members. That has already been partly done and will be continued during the session as the members appear.

Next in order is the annual address by the President of the Association.

(The President here delivered his address on the subject of "The Doctrine of Stare Decisis as Understood and Misunderstood." See Appendix, I.)

President Brannon: The next order of business is the report of the Committee on Admissions. Is that committee ready to report?

Secretary Hubbard: Before that matter is reached I will ask if it is not customary for the members of the Association to have an opportunity to make comments on the President's address?

President Brannon: I beg pardon; that is always understood—that the matters discussed by the President are open for any comments—and we shall be glad to hear from any of the members who desire to discuss them.

Secretary Hubbard: In accordance with your request, Mr. President I should like to open that matter by reading that part of your address which you were too modest to read yourself, and caused to be laid upon the Secretary's desk, entitled

The Maxim and the Muse.

Stand by the ancient landmarks of the laws;
Let not their wholesome influence be relinquished;
Take care lest any long-distinguished cause

By too fine reasoning be too much distinguished.
The common law deserves some little heed
In spite of obsolescent nomenclature;
Smith's Leading Cases ought to keep the lead
Until supplanted by the Legislature
Like Pyramids that have withstood the sand
Of sand-blown Egypt since the days of Isis,
So elemental precedents should stand
And judges cite the rule, Stare decisis.

President Brannon: As I said in my conclusion, if I have succeeded in arousing sufficient interest to invoke a discussion of any of these matters, I shall be glad to hear from the members of the Association upon the subject.

Judge T. P. Jacobs: I desire to inquire whether in this court dissenting opinions are in order?

President Brannon: I shall hold that they are perfectly admissible, sir.

Judge T. P. Jacobs: Mr. President and Gentlemen: There is a great deal of meat in that address, (this is not said by way of compliment, however,) and there is a great deal of food for thought. Now, it occurs to me that if this address is to be passed by without some definite action expressive of the opinion—the aggregate opinion—of this Association, that the thoughts suggested in that paper to the Association will go the way of all discussions which we indulge in relating to complaints against some of the actions of the Supreme Court of Appeals.

I am opposed to street corner discussions and criticisms of the court of appeals, or any other court for that matter. Our courts, both superior and inferior, are liable to criticism—proper, just, judicious criticism—and I do not know that they claim immunity from such consideration at the hands of the bar. It does seem to me, therefore, if we coincide with the main views of the President, that by resolution or by action of some kind we ought to say so. I am opposed to hasty or ill digested action either by the Bar Association or by any court, but I am above all opposed to what I may, with due respect, term the injudicious overruling of well settled cases; and as the President has well said, if it is necessary to change the law, let it be done by the legislature—the law-making power—and done prospectively; and I made the mental inquiry, while the paper was being read: "Who gave appellate courts the authority to overrule any case?" Those familiar with the history of our country, and I take it we all are, recollect with what jealous care our revolutionary forefathers guarded their own rights, and in creating governments and commonwealths and in making constitutions how carefully they limited the powers of the various departments of government, with one exception. The American idea has prevailed throughout, that in the establishment or constitution of a government the underlying principle should be kept in view of a su-

preme executive, legislative and judicial department. Now, in each of these, beginning with the executive and the legislative, the most careful safeguards have been thrown around the people; the powers of those departments are limited by express constitutional and statutory provisions; but it did not occur to our forefathers, and it has not occurred to us, yet, to limit or hedge about the judicial department with any such safeguards, and today the power exists in any appellate court in the land, unhindered, to overrule every case that has heretofore been established.

Now, it is to be said, to the everlasting honor of the judiciary of the country, that in the main they have not exercised that power greatly to the hurt of the people; but they have the power, and the astonishing thing in my mind is that our forefathers, who were so jealous of their rights, should have left this power unguarded and unlimited.

I agree in the main with what the President has said on the subject of stare decisis. It is the only safe rule, and the fact that decisions have been made, originally based on wrong impressions or wrong ideas of the law, is no reason in the world why they should be overruled. A court, when it comes up to the threshold of such considerations should remember that old maxim—as old as the common law itself—"communis error facit jus;" "a common error makes law;" or those other principles laid down by every writer who discusses questions of legal maxims, that what was at first illegal—granting that some given decision was wrong and based upon an illegal and improper principle—yet, what was at first illegal, being repeated many times, is presumed to have acquired the force of usage and then it is not impolitic, and it would be wrong to depart from it.

Now, I have often been diverted with this remark found in the opinions of appellate courts: "It is well settled law," or "It is fixed law," that so and so is so and so. Now, how many times does a question have to be decided to make it "well settled law," or how often does it have to be repeated to make it "fixed law?" Better were it far that we should adopt the maxim that one decision—one adjudication—should be regarded as fixing the law and as settling the law, than that we should be in a condition where we might be surprised at any time by the opinion of some new judge who comes upon the appellate bench with some new ideas he has vowed, in the long past, if he ever had an opportunity to put in force he would do so.

Now, I happened to be investigating this question the other day, and I want, for the benefit of this Association—not by way of giving them anything new but by way of calling their attention to something with which they were familiar years ago—I want to read to you an extract from Chancellor Kent's lecture on this very subject of stare decisis, and it seems to me it is all that need be said in support of the position that the rule stare decisis should be lived up to as an infallible and abiding rule of government and of property. Chancellor

Kent, in his twenty-first lecture entitled "Sources of the Law," says:

"A solemn decision upon a point of law, arising in any given case, becomes an authority in a like case, because it is the highest evidence which we can have of the law applicable to the subject, and the judges are bound to follow that decision so long as it stands unreversed, unless it can be shown that the law was misunderstood or misapplied in that particular case. If a decision has been made upon solid argument and mature deliberation, the presumption is in favor of its correctness; and the community have a right to regard it as a just declaration or exposition of the law, and to regulate their actions and contracts by it."

And that is the principal argument for abiding by the law as once settled. Even if it is wrong in its inception, if it has been settled and adjudicated, it is better if we abide by it for all future time unless the legislature should make a change, and then they should make that change prospectively.

"It would therefore be extremely inconvenient to the public, if precedents were not duly regarded as implicitly followed. It is by the notoriety and stability of such rules that professional men can give safe advice to those that consult them;" (that is not true to-day), "and people in general can venture with confidence to buy and trust, and to deal with each other. If judicial decisions were to be lightly disregarded, we should disturb and unsettle the great landmarks of property. When a rule has been once deliberately adopted and declared, it ought not to be disturbed, unless by a court of appeal or review, and never by the same court, except for very cogent reasons, and upon a clear manifestation of error; and if the practice were otherwise, it would be leaving us in a state of perplexing uncertainty as to the law. The language of Sir William Jones is exceedingly forcible on this point. 'No man,' says he, 'who is not a lawyer, would ever know how to act; and no man who is a lawyer would, in many instances, know what to advise, unless courts were bound by authority as firmly as the Pagan deities were supposed to be bound by the decrees of fate.'"

Now .I insist, Mr. President and Gentlemen of the Association, that when the highest appellate court in this State decides a question upon argument and upon mature deliberation, they ought not to have the power to reverse that decision and to overrule it. And this, too, if we concede that it might not have been decided correctly. Let the legislature be appealed to. The court ought not to have the right or the authority to overrule that case. By doing so they reach matters that the legislature is prohibited sometimes from reaching by reason of constitutional provisions, and sometimes matters are reached by a decision of the court of appeals which the legislature could not reach by an act, because that act would be in violation of a vested right of law. The interpreting power ought not to be greater than the law making power.

An eminent English lawyer has said that "variety of opinion and novelty of decision are the two plagues of the commonwealth." Chancellor Kent in his time, as much as seventy-eight years ago, complained of the fact that in the English empire and in the American states more than one thousand cases had been overruled. And what must it be at this day? After more than three-quarters of a century has passed what must it be?

It occurs to me, as I said in the outset, that unless we mean to sit still and do nothing, we should make some pronouncement upon the record of this Association, with the profoundest respect for our courts, the substance of which should be that we are opposed to the exercise of the power of overruling adjudicated cases. Either that or we should quit criticising them around the hotels and in our offices and on the street corners. I take it that our public officers take suggestions kindly and profit by them; but our appellate courts ought to know that the profession does not look with entire complacency upon their exercise of the self-constituted power, the right to overrule cases. I say that power does not exist anywhere. It is akin to that power claimed by one of the old kings of England—the right of dispensing with the law—and it was such a claim as that that cost one of the English kings his crown and his head. We let the courts go along and overrule adjudicated cases that are ten, twenty-five or fifty years old without making any complaint except a little grumbling. We would not submit to such a transgression of the written rules of the State or National government without more complaining; and, indeed, it would be ground in many instances for impeachment. It is equivalent, in other words, to the right of dispensing with the law in the American system.

I would suggest for the consideration of this Association that some gentleman prepare a resolution in respectful and manly terms, and that it be adopted by this body, showing that this Association dissents from some of the things that the Supreme Court of Appeals does. I have no criticism to make of the Court of Appeals. We all have some cases there, I presume, and sometimes we lose. We do not criticise the court for that mere fact, but we do criticise when we lose and when, in order to reach a conclusion to decide adversely, the court has necessarily to override some case in some other State or in our own State on which we have relied. Then there is ground, and just ground, for complaint.

I suggest, therefore, that some gentleman, the Secretary, for instance, or some one of the standing committees—say the Committee on Judicial Administration and Legal Reform—put this thing in tangible shape, in respectful and manly language, and that we adopt it.

President Brannon: Are there any further remarks, gentlemen?

Mr George E. Price: Mr. President: I listened with a great deal of

interest and was very much instructed by the very able and admirable address of the President. I concur in the conclusions of and the general principles announced in that address, and I take it there is no lawyer, raised under the common law system, who will not concur in it and I am almost inclined to believe that the judges of the court of appeals, whose actions are complained of, will say that they concur in the doctrines there announced.

I do not concur in the suggestion of my learned brother (Judge Jacobs) who has just taken his seat, that the court of appeals has no power to overrule adjudicated cases, and I do not know how you would strip them of that power. A mere question of power,—whether it is proper for them to do it, whether it is best for them to do it, whether it is good policy for them to do it, and whether it is in accordance with the system of the common law to do it—is a different proposition; but it happens that under a republican form of government you have at least to have some great tribunal—some central tribunal—to whom all questions in dispute must be referred in order that we may not be driven to the fore, and that tribunal is necessarily clothed with power to decide upon its own powers. What would you suggest that our legislature should do to prohibit the court of appeals from overruling an adjudicated case? Suppose the legislature would pass a law that after the court of appeals has once settled a question by adjudication, that such decision should not be overruled by that court, what would prevent that court from saying that such law was unconstitutional and invaded the province of the judiciary and was null and void and would continue to overrule cases? If they did, what would you do about it? Isn't the only remedy the one that has been adopted—that of criticising and calling the attention of the court to the rule, and the expression merely of a sentiment or desire on the part of the bar that the common law rule should be adhered to by the court and merely recall to them that doctrine? Now, that sort of an expression may have some effect.

Can it be supposed, gentlemen, that this case of Ralston has not been argued before that court by lawyers of ability on both sides and that this question of **stare decisis** has not been invoked in that argument? Isn't it likely that the same doctrines that have been invoked by the President in his address here before this assembly, were pressed before that court in that very case, and can it be supposed that the court has rendered this decision without investigating and without its attention being called to this doctrine of stare decisis? Therefore, what I mean to say is, that the court itself must ultimately pass upon this question as to its right and its power, and where it will exercise that power, and the only curb we have on them is to try and convince them that in a particular case it ought not to be done, and that will usually apply.

There is something to be said on the other side, too, of this ques-

tion. It is not a one-sided question. I do not know whether we would be ready, without a great deal of consideration and deliberation, to say that no case, no principle once decided by the court of appeals should be reconsidered and reversed without an act of the legislature. If we did, we would go contrary to what has been recognized as the power of the court and to what has been the practice more or less ever since courts have been in existence. I believe there has always been a qualification, just as there was in the extract read by the brother from Chancellor Kent. Unless it appears that the law was plainly misapprehended in that particular case, or some such qualification, you would find in nearly all the books that the doctrine is all right but it is like every other doctrine—it has some slight exception and qualification—and we would hesitate a good while before we would adopt as an expression of the bar of West Virginia that under no circumstances should our court of appeals reverse a former holding.

Now, understand me, Mr. President and gentleman of the Association, that I have been hurt pretty badly by these reversals of former decisions. I have suffered awfully by the changing of rules of property in tax cases which had stood from back in the seventies up until a very recent day, when they were swept aside by two or three radical decisions overturning every thing which had been settled; upon which I had given views; upon which large bodies of property had been bought, and affecting titles that we thought were all settled. I say that those decisions in this section of the State, as Mr. Brown pointed out in an address delivered a few years ago, and before these recent decisions, have unsettled things here very much, and they are still unsettled and there are still cases pending upon rehearing.

I am not prepared to take the position that the court of appeals has not the power to do it, or to say that it ought not under any circumstances to do it; but I am prepared to say what I now say that I do not think they ought to do it under ordinary circumstances. I think they ought to adhere strictly to the doctrine announced in that paper—that a long line of decisions affecting the rights of property ought to be adhered to without reference to whether it was originally founded upon correct principles or not.

Judge Jacobs: Pardon me a moment. If Senator Price understood me to say or to believe that the supreme court had no authority to overrule cases he misunderstood me. This is what I complained of: That by long usage they have too much power in that direction. Neither, sir, would I curtail the power of overruling cases by any statutory enactment. However, it would not derogate from their dignity to hedge and limit them about by provisions of law, either constitutional or statutory, any more than it does from the dignity of the governor, or the legislature itself, which prescribes its own rules. The certainty of the law is what the citizens want to know. All of you recollect the little scrap of history, that one of the Roman emperors wrote his laws so high upon a pillar that his subjects could

not read them, and he then decapitated them for disobeying his laws. Certainty of the law is what we want. Now, my remedy would be, inasmuch as the executive authority is limited by constitutional provision, and as even the legislative power is limited by constitutional provision, that when it comes to the supreme court there should be this other constitutional provision in the fundamental law; that when a question has been decided, after providing that the court shall pass upon all questions fairly arising upon the record, and reach an opinion, and put their decision in the syllabus, it should be further provided that a question once adjudicated by the court shall remain the law and no change shall be made unless the legislature after that time shall change it. Now, that is a reasonable restriction in the interest of the certainty of the law and that certainly does not infringe upon the dignity of the court; and I do go this far: that with our present light and with the present ability upon our various appellate benches, and with the present ability at the bar, and with the present value of property and property rights—I do go this far: I would say that a case once decided, which involved property rights, ought not to be overruled.

Mr. George E. Price: You say it ought not to be overruled?

Judge T. P. Jacobs: Yes, sir; that it ought not to be overruled, though some persons might dissent from the views of the court and though it might in the future appear that it was ill considered and had not really been decided upon correct principles, and if decided so, that it is to become the rule of property and of property rights. The constitution ought to provide that the courts should not overrule that decision nor overrule the principles of that case, leaving the legislature always open—which is the law-making power and the law-amending power—to pronounce by enactment the same way as they do by other enactments, as to what shall be the law in the future; and if it has been found by experience in time that any adjudication made by the supreme court operates oppressively or does not operate as it was anticipated it would operate, let the legislature make the change; but don't allow one hundred, or two hundred or five hundred thousand people to acquire property on the strength of that decision and then suddenly wake them up some morning with an adverse decision of the supreme court telling them they are trespassers, and have established a nuisance, and that they are violators of the law. That is what I contend for—certainty—and the only way we can have that is to make the decisions of the appellate courts just as certain for the future in their effect and scope, as the statutes of the State are which are enacted by the legislature and put into force and published; and not condemn a man who for twenty-five, thirty or forty years has been obeying and living up to a former adjudication, when you arouse him in his old days to a realization of the fact that he has suddenly been convicted as a trespasser anr a nuisance. Instead of doing so why not say by constitutional enactment to the highest court in the land,

"When you have once pronounced upon a case you must abide by it." It is simply in the interest of public policy and public and private rights and the security of titles, and you can hurt no one.

Mr. C. M. Alderson: Judge will you pardon a question?

Judge T. P. Jacobs: Certainly.

Mr. C. M. Alderson: Would you trust the matter to the legislature rather than to the court?

Judge T. P. Jacobs: Yes, sir; I would rather trust the discretion of the legislature in acting prospectively than I would trust any court to go back for fifteen or twenty years and rip up (excuse the expression)—and rip up two, four, five or six cases all in one decision. Yes, sir; I would rather take my chances with having that much prospectively, than to let any man or any court exercise the power of disrupting, destroying and nullifying adjudicated cases involvng the personal and property rights of our people. I would trust the legislature or I would go without relief first. Why, gentlemen, it is the only part of our State government that is unlimited in this respect. Let the governor step over the plain, written law and how soon would there be an impeachment? Let a member of the legislature commit some questionable act and very likely he would be expelled, or he would at least be disciplined and could not get back there again.

Yes, sir; I will answer, that when an adjudication has been entered I want to abide by it now, henceforth and forever and I would not trust a bench of angels to change it, when it might have the effect of condemning men, (who were imagining they were living under the law,) as trespassers and violators of the law. I would run the risk of going without a remedy or trying to get through the channels of the legislature—the law-making body of the state.

Mr. George E. Price: I move that this subject, together with the address of the President, be referred to the Committee on Judicial Administration and Legal Reform for such report as said committee deems proper to make.

Mr. W. N. Miller: I second that motion.

President Brannon: It has been moved and seconded that the whole subject, together with the address of the President, be referred to the committee named. Are there any remarks?

Mr. Ira E. Robinson: Just pardon me. Will the gentleman permit a little amendment whereby that committee shall be directed to report on this subject to-morrow morning? The proposition is an important one—as important, probably, as any that may arise at this sessin.

Mr. George E. Price: I will say "tomorrow morning, if practicable."

The motion was put by the chair and carried.

Judge T. P. Jacobs: It is getting a little late and as the visitors

here do not desire to interfere with any of the arrangements of the Charleston gentlemen, I move that we take a recess until half past two o'clock this afternoon.

Which motion was put and carried.

FIRST DAY: AFTERNOON SESSION.

The Association re-assembled at 2:30 o'clock p. m.

President Brannon: The Bar Association will come to order. Gentlemen, you will find a programme, in a conveniently printed form, on the desk of the Secretary, that all of you may get as you wish. The report of the Committee on Admissions is next in order.

Mr. W. B. Mathews: Mr. President: My colleagues on the Committee on Admissions are Captain A. M. Poundstone, of Buckhannon; George B. Caldwell, of Wheeling; C. W. Dillon, of Fayetteville; and J. Hop Woods, of Philippi. Several days ago I called a meeting of the committee to be held at nine o'clock this morning, and the only other member of the commitee beside myself who made his appearance was my friend Mr. Dillon. We very readily agreed upon a report. I am not advised, Mr. President, as to what constitutes a quorum of our standing committees, but if you will accept a report from the hands of two of a committee of five, we shall submit it.

President Brannon: If there is no objection it will be received.

Mr. W. B. Mathews read Report No. 1, from the Committee on admissions, as follows:

REPORT NO. I.

FROM THE COMMITTEE ON ADMISSIONS.

Hon. W. W. Brannon,

President West Virginia Bar Association. Sir:

Your Committee on Admissions beg to report to you and through you to the Association, as follows:

In response to several inquiries, and after consultation with the principal officers of the Association, a blank form of application for membership, adapted both to counties having a local association and those having none, was prepared and printed for distribution exclusively among the present membership. By the use of these blanks, applications are more readily made in conformity to the requirements of the constitution. Copies of said blanks are attached hereto.

Solicitation of new members was not made by your Committee, but on the other hand, as a precaution for the guidance of the Committee, a space was provided in the printed blank, for the endorsement or recommendation of a member of the Association of each application.

Thus recommended, and all requirements of the Constitution having been complied with, it affords your Committee great pleasure in nominating for membership in the West Virginia Bar Associaton, each of the 34 attorneys named on the accompanying list of applicants,

eleven of whom are members of county associations and twenty-three are not. To facilitate the balloting, we have prepared and submit herewith printed ballots containing all the names herein proposed.

Respectfully submitted,

W. B. MATHEWS,
C. W. DILLON,
Committee on Admissions.

Mr. B. M. Ambler: I move that the names of the gentlemen reported for membership be now read.

The motion was put by the Chair and carried and Mr. Mathews read the names, as follows:

Anderson, H. M., Charleston; Anderson, L. C., Welch; Black, V. L., Charleston; Bland, Robt. L., Weston; Bunting, J. G., Weston; Briggs, Murray, Charleston; Buster, H. B., Charleston; Cato, H. S., Charleston; Clay, Buckner, Charleston; Flournoy, R. P., Charleston; Goodykoontz, Wells, Williamson; Hamilton, A. W., Fayetteville; Hoover, John M., Webster Springs; Horan, A. J., Summers; Horan, T. O., Clay; Horan, T. B., Summerville, Hubbard, Robert T. Jr., Fayetteville; Kreps, C. A., Parkersburg; Linn, R. G., Charleston; Loeb, Leo, Charleston; Mathews, Daniel, Charleston; McDonald, Angus W., Charleston; McIntire, Aloysius C., Berkeley Springs; McRa, Duncan, Charleston; Northcott, Elliott, Huntington; Poteet, L. E., Fayetteville; Price, Andrew, Marlinton; Ritz, H. A., Bluefield; Sanders, J. M., Bluefield; Shrewsbury, Geo. H., Charleston; Sperry, Clarence B., Clarksburg; Spilman, R. S., Charleston; Stewart, Terrence D., Morgantown; White, J. B., Charleston.

Mr. J. W. Vandervort: If there is no objection to any of the names to be voted for I move that the Secretary be instructed to cast the ballot of the Association for the several names proposed for membership.

President Brannon: As I understand it the constitutional requirement is that the election be by ballot. That has not been very well observed heretofore, some way being found to avoid it, but in this instance we shall order the election to be by ballot.

Mr. J. W. Vandervort: I shall ask, then, to withdraw my motion.

Mr. B. M. Ambler: The balloting is an unnecessary consumption of time, and I move that by common consent the Secretary be authorized to cast the ballot of the Association.

Mr. W. P. Hubbard: When this committee has, in the most admirable report ever made to the Association by such committee, provided a method for the observance of a constitutional requirement by having ballots printed with the names of the applicants appearing thereon, why not proceed accordingly? We are not all obliged to cast ballots. Let three or four vote, and when the vote has been cast and counted the constitution will have been lived up too. There may come a time when gentlemen may desire to vote against some name on a list. There

is no such person's name, so far as I am concerned, on this list to-day, as I shall demonstrate by not casting a ballot; but there may come a time when some one may want to express his wishes by casting a ballot against some one who is objectionable to him. It seems to me that privilege can only be preserved by living up to the constitution. This committee has taken the trouble of having these printed ballots here and why not use them, when it involves no particular inconvenience and complies with the constitution.

President Brannon: There being objection the balloting will proceed and I appoint Mr. W. B. Mathews and Mr. B. M. Ambler to take the vote.

Mr. C. W. Osenton: I desire to offer an amendment to the motion of the gentleman from Ohio county. I move that the Committee on Credentials be dispensed with in this matter.

President Brannon: Have we a second to that? I assume that you have all read the provisions of the constitution on this matter. If you want to vote against any particular person—if you have any objection to any individual—you will simply write "the word 'no' against any name or names upon the ticket" which "shall be deemed a negative vote against such name or names, and against those only. One negative vote in every five shall suffice to defeat an election."

Mr. B. M. Ambler: The tellers beg leave to report that the ballots have all been cast in favor of the applicants.

Whereupon, the President declared that all the gentlemen named on the printed list had been duly elected members of this Association.

President Brannon: The report of the Secretary will be made by Mr. Nelson C. Hubbard, of Wheeling.

Judge T. P. Jacobs: I ask the privilege, before we proceed with the regular order, to offer a resolution, and after reading the resolution I will move that it be referred to a special committee. Regularly, I suppose, such a reference should be to the Committee on Legal Education, but there being so few of that committee here, I should think a special committee would be the proper thing.

Preliminary to reading the resolution I want to say that it is offered in pursuance of an intimation or request from various sources and among those sources some of the young gentlemen who have been attending, or who contemplate attending, the State University Law School. This is the only apology I have for offering it. With your permission I would like to read it and then follow it with a motion to refer.

President Brannon: If there is no objection it will be read now.

Bar Association Lectures.

"This Association having steadily in view the maintenance of a high standard of professional ethics and legal education, not only among its present members, but also among those who shall in the

future apply for admission to the bar and to membership in the Association; and believing at the same time that every facility for the maintenance of such standard should receive the cordial endorsement of the Association and the cooperation of its individual members, hereby expresses its entire approbation of the policy which established the Law School at the State University and pledges its co-operation in all matters relating to the future maintenance and efficiency of the said School.

The members of the Association are of opinion that a closer relationship should exist between the Association on the one part, and the Law Faculty, as well as the young gentlemen who resort to the School for legal education on the other part; and that a deeper interest in the success of the School and of the young men who attend the same, will result in mutual benefit to them, to the students and to the state.

Resolved, therefore, that with the consent of the Board of Regents and the Law Faculty of the University, there shall be established at the University in connection with the law course, a course of lectures to be known as

"The Bar Association Lectures"

which shall be without cost to the University or to this Association.

That said Law Faculty shall select and designate members of this Association who shall be willing to deliver lectures once or twice per month during the Academic year before the law classes of the University either upon legal, economic, historic, commercial or other public matters having some relation to the study and practice of the law.

That any member so selected by the Law Faculty may select his own subject and shall have four weeks notice of the time of delivery.

That the members of this Association having the welfare of the young men of the state who shall succeed them at the bench and bar in mind will each hold himself in readiness to respond with such lecture or paper when requested so to do by said Law Faculty."

Judge T. P. Jacobs: In view of the thin attendance of the Committee on Legal Education, I move a reference of this resolution to Professor W. P. Willey, Ira E. Robinson and Harvey W. Harmer, with the request that they make report and that it be made a special order for to-morrow morning at 11 o'clock.

After being duly seconded the motion was put by the Chair and carried.

President Brannon: The next order of business is the report of the Secretary.

The Secretary, Mr. Nelson C. Hubbard presented his report as follows:

"Report Of the Secretary.

The reports of the secretary should no doubt include from time to time some reference to such matters as are peculiarly brought to his attention by reason of his office, and mention is now made of certain matters of this sort.

1. **Annual Report.** Some experimental changes have been made in the printed official report of the annual meeting. The latest volume is substantially bound in buckram, and is sewed instead of wired, so that it will lie open at any page. At the beginning is placed a table of contents, supplanting the usual index. This is followed by a list of those members registered at the annual meeting, and by the list of officers and committees. The treasurer's account is not given in detail, the full statement being accessible in the January Bar. The roll of membership was not proof-read by the secretary, and the list of addresses is not strictly accurate, though a number of corrections have been made. Since publication was had, many such errors have been noted, with the aid of the treasurer, and the list which will be handed to the new secretary will be more reliable. It is suggested, however, that the members call the attention of the secretary to any such errors appearing in the printed volume.

Would not be well to use this book to some extent as a legal directory, and to select out-of-town correspondents from its membership list? If so, there should be a supplementary list by towns or geographical districts, such as is found in most of the reports issued by like associations. Should we not also print the list of our presidents, and of the papers and addresses heard by the association—partly for convenience of reference, but more in the hope of lending to such contributions an air of permanence which will add to their dignity and render them more easily obtained. Such lists also are found in the annual reports of other bar associations.

2. **Archives.** The association now has a home for its archives. Through the courtesy of Prof. W. P. Willey chairman of the Executive Council, these have been housed in an alcove of the law library of the state university at Morgantown, and any records to be preserved for our association should be sent to Prof. Willey at the University. Other associations are continually writing for back numbers of our reports. and stating that they are trying to complete their sets of reports of the various bar associations. Any reports from other states, and particularly back numbers of our own reports may now be sent to Prof. Willey, either as a gift or loan to the bar association.

3. **By-laws.** The Executive Council has formulated a plan which provides that all nominations of officers be made through a committee on nominations. While we have thriven in past years under the policy of electing without opposition the person first nominated for any office, still the new plan is perhaps more sane and safe. It is considered important that the president be chosen on the first day of the session, so

that he can name his committees with care and afford them an opportunity to meet, organize and lay out their work on the second day. Heretofore the work of a committee has been performed chiefly by its chairman. The Executive Council has desired to emphasize the work of its committees, and has taken this means of aiding them. The association has resolved to have an annual banquet and the Executive Council has therefore provided for the appointment of a committee on banquet, which it is assumed will be chosen each year from the local membership.

4. **New Members.** The secretary has not felt authorized to make active efforts to increase the membership. Some state bar associations aim to include only the leading lawyers, and admit none until they have practiced for a certain number of years. Others open the doors generally to those who apply, and others actively undertake to extend their influence in directions both high and low, and urge the reputable lawyers of the state to take up membership in the bar association. The personal view of the secretary is that we should aim to include all honorable lawyers of the state who desire to join us, and that especial pains should be taken to secure for the young lawyer those incentives which spring from his attendance at these meetings of the leaders of his profession in the state. Whatever may be the desirable attitude for the association to adopt toward lawyers who are not on its roll of membership, the association should know its mind and make known its policy in this connection.

5. **Time of Annual Meeting.** For the third year in succession the annual meeting is held in holiday week. This arrangement has proved satisfactory. If it may now be considered a custom of the Association the members of the bar in each circuit should call it to the attention of the presiding judge, and secure freedom from all court engagements at that time.

6. **Local Bar Associations.** Attention is drawn to the fact that our state has but few county bar associations, and that almost the only form of activity shown by these associations is the occasional election of officers. We might well have, as other state associations have, a Committee on Local Bar Associations, charged with the duty of organizing a local association in each county or judicial district, and of suggesting to such associations the proper scope and method of their activities. This report might well include some intimation of the work of other state bar associations as shown by the annual reports received by the secretary from time to time, but this suggestion shall be a legacy to my successor."

President Brannon: What shall be done with the report of the Secretary?

Mr. L. J. Williams: I move that it be received, approved and filed.

The motion was put by the Chair and carried.

President Brannon: Has the chairman of the Executive Council appointed two gentlemen to audit the settlement of the Treasurer? I see that By-Law No. 10 requires that.

Mr. W. N. Miller: That has been done and the committee has made its report.

President Brannon: Then the report of the Treasurer will be presented to the Association.

The Treasurer, Mr. W. N. Miller, submitted his report, as follows:

To the West Virginia Bar Association:

Gentlemen:

I submit to you herewith an itemized statement of the receipts and disbursements of the Treasurer for the past year. The net balance from 1903 was $1885.61. The receipts since the last report of the Treasurer have been $1329.75, total $3215.36. The disbursements have been $1197.47, leaving a balance of $2017.89 in the Treasury, an increase of $132.28 in the balance over last year. Vouchers are submitted herewith.

Of the amount of annual dues collected and included in the receipts of the last year the Treasurer has set apart one-fourth thereof, amounting to $295.00, and carried the same to the credit of the Bar. My report last year showed a balance against The Bar of $107.95, which contained a slight error, as it should have been $108.95. The disbursements of the past year on account of the Bar aggregated $432.00. The disbursements of the past year added to the balance against The Bar as shown by my previous report exceed the receipts by the sum of $245.95.

There is outstanding and owing the Association for dues the sum of $831.50.

There is also submitted herewith a list of members subject to suspension under Section 22 of the by-laws as reported by the Executive Council at the last session. I call attention in this connection to the fact that in the report of the Executive Council at the last meeting, page 82 of the printed minutes, the council reported an amendment to the by-laws, Section 22, as covering this subject. Inasmuch as this subject seems to belong rather to the constitution and as the last article of the constitution is number 21 and the last section of the by-laws is Section 12, I am persuaded that the Executive Council meant to propose an amendment to the constitution, and, if so, such amendment would be controlled by Article 19 of the constitution providing that "This constitution may be altered or amended at any annual meeting on the recommendation of the Executive Council, by a vote of a majority of the members present, or without such recommendation by a vote of two-thirds of the members present." The action taken upon the report of the Executive Council, which is one of mere acquiesence, if anything, is shown at page 83 of the printed minutes, would not be such action as is contemplated by this article of the constitution, and the question may be fairly presented, therefore, whether or not if the Section 22 proposed was intended as an

amendment of the constitution, as seems likely, the amendment has been adopted so as to give it legal effect and be binding upon the membership of the Association, or impose the duty upon the Treasurer contemplated. I have, however, in obedience to the requirements of the new section presented my report of the members who would be subject to it if it is a valid law of the Association.

Respectfully submitted,

W. N. MILLER,

Treasurer.

Receipts, Account Due.

1903.		
Dec.31	To balance from 1903.	$1994.56
Dec. 31	F. T. Martin, 1903,	3.00
31	W. Frank Stout, 1903,	3.00
31	T. A. Brown, 1903,	3.00
31	Tracy L. Jeffords, 1904,	3.00
31	C. M. Murphy, In fee & 1904,	8.00
31	E. D. Talbott, 1904,	3.00
31	W. T. George, 1904,	3.00
31	Walter Pendleton, 1904,	3.00
31	T. M. Garvin, 1904,	3.00
31	M. F. Snyder, 1904,	3.00
31	R. M. Addleman, In fee,	5.00
31	A. J. Fickerson, In. fee,	5.00
31	A. L. Lehman, 1904,	3.00
31	M. G. Sperry, 1904,	3.00
31	J. E. Law, 1904,	3.00
31	Harvey W. Harmer, 1904,	3.00
31	W. S. Allen, 1902,	3.00
31	L. J. Williams, 1904,	3.00
31	John L. Lehman, 1903-4,	6.00
31	C. M. Alderson, 1904,	3.00
31	O. S. Marshall, 1903,	3.00
31	Frank Cox, 1902-3-4,	9.00
31	H. G. Williams, 1903-4,	6.00
31	A. G. Dayton, 1903-4,	6.00
31	Haymond Maxwell, 1904	3.00
31	F. W. Clark, 1902-3,	6.00
31	W. G. Mathews, In. Fee,	5.00
31	S. V. Avis, In. Fee,	5.00
31	N. C. Prickett, In. Fee,	5.00
31	E. M. McPeak, In Fee,	5.00
31	J. C. Simpson, In. Fee,	5.00
31	Thos. H. Cornett, In Fee,	5.00
31	Jas. H. Strickling, In. Fee,	5.00
31	Waller R. Staples, In. Fee,	5.00
31	Jake Fisher, In Fee,	5.00

1903.			
Dec.31		Harry H. Byer, In Fee,	5.00
31		A. B. Hunt, In. Fee,	5.00
31		Dan B. Leonard, In. Fee,	5.00
31		Ross Wells, In. Fee,	5.00
31		R. S. Douglas, In. Fee,	5.00
31		A. Bliss McCrum, In. Fee,	5.00
1904			
Jan. 6		A. L. Hooten, In Fee, (1903)	5.00
Mar. 18		R. H. Freer, 1902-3,	6.00
18		Jno. T. Cooper, On account,	5.00
22		Blaine W. Taylor, 1902-3,	6.00
May 19		C. C. Watts, 1899-1900-1-2-3,	15.00
Jul. 2		Jno. T. Cooper, On account,,	5.00
22		C. J. Faulkner, 1904,	3.00
27		Jas. L. Hamill, 1904,	3.00
30		J. T. Hoke, 1904,	3.00
Aug. 1		J. S. Spencer, 1903-4,	6.00
2		O. W. O. Hardman, 1904,	2.00
5		A. D. Preston, 1904,	3.00
5		J. R. Koontz, 1904,	3.00
Aug. 5	To	B. F. Kellar, 1904,	3.00
2		E. P. Rucker, 1904,	3.00
5		W. B. Lindsey, 1903-4,	6.00
6		St. George T. Brooke, 1904,	3.00
8		F. M. Reynolds, 1904,	3.00
8		W. C. Clayton, 1904,	3.00
11		W. P. Hubbard, 1904,	3.00
12		S. G. Smith, 1904,	3.00
12		E. G. Smith, 1904,	3.00
12		Thayer Melvin, 1904,	3.00
13		Reese Blizzard, 1904,	3.00
15		A. J. Clarke, 1904,	3.00
16		T. S. Riley, 1904,	3.00
17		C. W. Dailey, 1904,	3.00
17		John Bassel, 1904,	3.00
17		F. P. Moats, In. Fee & 1904,	8.00
18		S. B. Hall, 1904,	3.00
18		W. H. Wolfe, Jr., In. Fee,	5.00
July18		T. O. Bullock, 1904,	3.00
19		W. W. Jackson, 1904,	3.00
19		C. D. Merrick, 1904,	3.00
19		Levin Smith, 1904,	3.00
19		W. W. VanWinkle, 1904,	3.00
19		B. M. Ambler, 1904,	3.00
19		M. G. Ambler, 1904,	3.00
20		Geo. W. Johnson, 1904,	3.00
20		James S. McCluer, 1904,	3.00

1904

July21	W. G. Peterkin, 1904,	3.00
22	A. D. Ireland, In. Fee,	5.00
22	C. A. Smith, 1904,	3.00
23	Smith D. Turner, 1903-4,	6.00
23	A. M. Poundstone, 1904,	3.00
23	C. C. Higginbotham, 1904,	3.00
23	J. C. McWhorter, 1904,	3.00
25	Ira E. Robinson, 1904,	3.00
25	John T. McGraw, 1904,	3.00
25	G. H. A. Kunst, 1904,	3.00
25	R. A. Quarrier, 1904,	3.00
25	W. L. Ashby, 1904,	3.00
25	Geo. E. Price, 1904,	3.00
25	E. W. Knight, 1904,	3.00
25	J. F. Brown, 1904,	3.00
25	M. Jackson, 1904,	3.00
25	John Wehrle, 1904,	3.00
25	Angus W. McDonald, 1904,	3.00
26	L. C. Crile, 1904,	3.00
26	Claude M. Gore, 1904,	3.00
26	W. M. Straus, 1902-3-4,	9.00
27	Wm. McDonald, 1904,	3.00
27	Geo. Poffenberger, 1904,	3.00
27	Jno. W. Davis, 1904,	3.00
27	Geo. W. Atkinson, 1904,	3.00
28	W. C. Mann, 1904,	3.00
28	F. L. Blackmarr, 1903-4,	6.00
28	Stuart W. Walker, 1902-3-4,	9.00
28	D. C. Westenhaver, 1904,	3.00
28	E. Boyd Faulkner, 1904,	3.00
28	W. C. Kilmer, 1904,	3.00
28	Allen B. Noll, 1904,	3.00
28	X. Poole, 1904,	3.00
28	A. W. Burdette, 1904,	3.00
28	C. W. Dillon, 1904,	3.00
28	C. W. Osenton, 1904,	3.00
28	E. L. Nuckols, 1904,	3.00
29	H. P. Camden, 1904,	3.00
29	John C. Palmer, Jr., 1904,	3.00
29	A. L. Hooten, 1904,	3.00
29	L. M. LaFollette, 1904,	3.00
29	M. H. Dent, 1904,	3.00
30	H. C. McWhorter, 1904,	3.00
30	W. H. Stokes, 1904,	3.00
30	G. M. Fleming, 1904,	3.00
30	J. M. Woods, 1903-4,	6.00

1904			
July30		R. W. Dailey, 1904,	3.00
30		J. Howard Holt, 1904,	3.00
30		D. B. Evans, 1904,	3.00
30		Henry C. Hervey, 1904,	3.00
30		C. L. Brown, 1904,	3.00
30		J. F. Barron, 1904,	3.00
Aug. 1	To	M. D. Post, 1904,	3.00
1		A. C. Nadenbousch, 1904,	3.00
1		C. E. Martin, 1904, (In Fee)	5.00
1		Thomas L. Brown, 1904,	3.00
1		Wm. M. O. Dawson, 1904,	3.00
2		Braxton D. Gibson, 1904,	3.00
2		Forrest W. Brown, 1904,	3.00
2		C. O. Streiby, 1904,	3.00
2		A. J. Valentine, 1904,	3.00
2		C. P. Dorr, 1904,	3.00
3		J. F. Strader, 1904,	3.00
3		W. P. Willey, 1904,	3.00
3		Joseph Morelnad, 1904,	3.00
3		D. C. Reay, 1904,	3.00
3		Edgar B. Stewart, 1904 & prev.,	13.00
3		C. W. Cramer, 1904,	3.00
3		S. F. Glasscock, 1904,	3.00
5		W. R. D. Dent, 1904,	3.00
5		W. G. Wilson, 1904,	3.00
5		J. A. Shepherd, 1904,	3.00
5		J. D. Logan, 1904,	3.00
5		A. N. Campbell, 1904,	3.00
6		E. S. Doolittle, 1904,	3.00
6		J. H. Miller, 1904,	3.00
6		T. N. Reed, 1904,	3.00
8		Robert White, 1904,	3.00
8		H. M. Russell, 1904,	3.00
8		J. B. Sommerville, 1904,	3.00
8		B. S. Allison, 1904,	3.00
8		L. F. Stifel, 1904,	3.00
8		Frank W. Nesbit, 1904,	3.00
8		Joseph R. Naylor, 1904,	3.00
8		James W. Ewing, 1904,	3.00
8		Ferdinand Wingerter, 1904,	3.00
8		R. M. Addleman, 1904,	3.00
8		A. G. Fickieson, 1904,	3.00
8		Frank A. McMechen, In Fee,	5.00
8		G. R. C. Allen, 1904,	3.00
8		John A. Howard, 1904,	3.00

1904		
Aug. 8	C. P. Flick, 1904,	3.00
8	Geo. E. Boyd, 1904,	3.00
8	C. E. Morris, 1904,	3.00
9	Jackson V. Blair, 1904,	3.00
9	M. H. Willis, 1904,	3.00
10	W. Scott Rucker, 1904,	3.00
11	O. J. Chambers, 1904,	3.00
12	F. W. Clark, 1904,	3.00
13	W. B. Cornwell, 1904,	3.00
13	John J. Cornwell, In Fee,	5.00
13	W. T. Ice, Jr., 1904,	3.00
13	C. F. Teter, 1904,	3.00
16	Andrew Edmiston, 1903-4,	6.00
16	W. B. McGary, 1903-4,	6.00
16	U. N. Arnett, 1904,	3.00
16	John W. Mason, 1904,	3.00
16	B. L. Butcher, 1904,	3.00
16	F. T. Martin, 1904,	3.00
16	E. M .Showalter, 1904,	3.00
18	H. B. Gilkeson, 1904,	3.00
19	Wm. H. Hearne, 1904,	3.00
19	Wm. McG. Hall, 1904,	3.00
19	Charles B. Johnson, 1903-4,	6.00
19	W. C. Meyer, 1904,	3.00
20	B. B. Dovener, 1904,	3.00
20	Basil T. Bower, 1904 & prev.	12.00
22	Richard R. McMahon, 1904,	3.00
23	John M. Hamilton, 1904,	3.00
23	C. W. Lynch, 1904,	3.00
23	M. F. Stiles, 1904,	3.00
23	Jno. D. Alderson, 1904,	3.00
25	H. C. Richards, 1904,	3.00
25	L. M. McClintic, 1904,	3.00
25	W. W. Brannon, 1904,	3.00
25	Romeo H. Freer, 1904,	3.00
27	G. B. Caldwell, 1904,	3.00
27	T. B. Enslow, 1904,	3.00
27	H. C. Simms, 1904,	3.00
27	Z. T. Vinson, 1904,	3.00
27	W. R. Thompson, 1904,	3.00
27	D. E. Mathews, 1904,	3.00
29	M. S. Hodges, 1904,	3.00
Sep. 2	Blaine W. Taylor, 1904,	3.00
5	F. C. Leftwitch, 1904,	3.00
5	Benj. Dailey, 1904,	3.00
19	Chas. S. Dice, 1904,	3.00

1904		
Sep.19	Jno. A. Preston, 1904,	3.00
24	A. M. Cunningham, 1903-4,	6.00
24	W. B. Cutright, 1904,	3.00
24	Felix C. Pifer, 1904,	3.00
Oct. 5	Chas. E. Hogg, 1904,	3.00
7	W. Dallas Payne, 1904,	3.00
11	W. Va. Ptg. Co. (Refund)	9.75
12	J. M .McWhorter, 1904,	3.00
Nov.12	G. W. McClintock, 1903-4,	6.00
26	Angus W. McDonald (Charlestown)	4.00
26.	Alfred Caldwell, 1904,	3.00
Dec. 9	W. G. Brown, 1902-3-4,	9.00
10	B. F. Meighen, 1903-4,	6.00
12	S. S. Green, 1901-2-3-4,	12.00
13	John J. Davis, 1903-4,	6.00
13	W. Frank Stout, 1904,	3.00
13	W. N. Miller, 1904,	3.00
14	John T. Cooper, 1903,	3.00
14	P. J. Crogan, 1904,	3.00
14	W. G. Conley, 1904,	3.00
14	Harvey F. Smith, 1904,	3.00
14	U. G. Young, 1904,	3.00
14	W. Mollohan, 1904,	3.00
15	H. C. Thurmond, 1904,	3.00
15	V. B. Archer, 1904,	3.00
15	H. B. Woods, 1904 & prev.,	15.00
15	S. C. Burdette, 1904 & prev.,	27.00
16	C. W. May, 1904,	3.00
16	R. G. Altizer, 1904,	3.00
17	P. W. Morris, 1903-4,	6.00
19	James C. Frazer, 1904,	3.00
20	O. S. Marshall, 1904,	3.00
21	T. P. Jacobs, 1904 & prev.,	10.00
21	J. G. St. Clair, 1904,	3.00
21	J. W. Vandervort, 1903-4,	6.00
21	W. E. Chilton, 1904 & prev.,	15.00
23	Jno. J. Coniff, 1904,	3.00
26	W. G. Bennett, 1904 & prev.,	12.00
26	J. B. Bennett, 1904 & prev.,	12.00
	Total	$3029.31

Receipts, Account The Bar.

1903		
Dec.31	F. T. Martin, 1903,	1.00
31	W. Frank Stout, 1903,	1.00
31	T. A. Brown, 1902,	1.00

1903		
Dec.31	C. M. Murphy, 1904,	1.00
31	E. D. Talbot, 1904,	1.00
31	W. T. George, 1904,	1.00
31	Walter Pendleton, 1904,	1.00
31	T. M. Garvin, 1904,	1.00
31	M. F. Snyder, 1904,	1.00
31	A. L. Lehman, 1904,	1.00
31	M. G. Sperry, 1904,	1.00
31	J. E. Law, 1904,	1.00
31	Harvey W. Harmer, 1904,	1.00
31	L. J. Williams, 1904,	1.00
31	John L. Lehman, 1903-4,	2.00
31	C. M. Alderson, 1904,	1.00
31	O. S. Marshall, 1904,	1.00
31	H. W. Williams, 1903-4,	2.00
31	A. G. Dayton, 1904,	2.00
31	Haymond Maxwell, 1904,	1.00
31	F. W. Clark, 1904 prev.	4.00
1904		
Jan. 6	Tracy L. Jeffords, 1904,	1.00
6	Jas. L. Hamill, 1904,	1.00
Feb. 4	Clarence E. Martin, 1902-3,	2.00
Mch.18	R. H. Freer, 1903 & prev.,	5.00
22	Blaine W. Taylor, 1902-3,	2.00
May19	C. C. Watts, 1902-3,	2.00
Jul.22	C. J. Faulkner, 1904,	1.00
30	J. T. Hoke, 1904,	1.00
Aug. 1	J. S. Spencer, 1903-4,	2.00
5	A. D. Preston, 1904,	1.00
5	B. F. Kellar,, 1904,	1.00
5	E. P. Rucker, 1904,	1.00
6	W. B. Lindsey, 1903-4,	2.00
6	St. G. T. Brooke, 1904,	1.00
8	F. M. Reynolds, 1904,	1.00
8	W. C. Clayton, 1904,	1.00
11	W. P. Hubbard, 1904,	1.00
12	S. G. Smith, 1904,	1.00
12	E. G. Smith, 1904,	1.00
12	Thayer Melvin, 1904,	1.00
13	Reese Blizzard, 1904,	1.00
15	A. J. Clarke, 1904,	1.00
16	T. S. Riley, 1904,	1.00
17	C. W. Dailey, 1904,	1.00
17	John Bassel, 1904,	1.00
17	F. P. Moats, 1904,	1.00
18	S. B. Hall, 1904,	1.00

1904		
July18	T. O. Bullock, 1904,	1.00
19	W. W. Jackson, 1904,	1.00
19	C. D. Merrick, 1904,	1.00
19	Levin Smith, 1904,	1.00
19	W. W. Van Winkle, 1904,	1.00
19	B. M. Ambler, 1904,	1.00
19	M. G. Ambler, 1904,	1.00
20	Geo. W. Johnson, 1904,	1.00
20	James S. McCluer, 1904,	1.00
21	W. G. Peterkin, 1904,	1.00
22	C. A. Smith, 1904,	1.00
23	Smith D. Turner, 1903-4,	2.00
23	A. M. Poundstone, 1904,	1.00
23	C. C. Higginbotham, 1904,	1.00
23	J. C. McWhorter, 1904,	1.00
25	Ira E. Robinson, 1904,	1.00
25	John T. McGraw, 1904,	1.00
25	G. H. A. Kunst, 1904,	1.00
25	R. A. Quarrier, 1904,	1.00
25	W. L. Ashby, 1904,	1.00
25	Geo. E. Price, 1904,	1.00
25	E. W. Knight, 1904,	1.00
25	J. F. Brown, 1904,	1.00
25	M Jackson, 1904,	1.00
25	John Wehrle, 1904,	1.00
25	Angus W. McDonald, 1904,	1.00
26	L. C. Crile, 1904,	1.00
26	Claude M. Gore, 1904,	1.00
26	W. M. Straus, 1902-3-4,	3.00
27	Wm. McDonald, 1904,	1.00
27	Geo. Poffenbarger, 1904,	1.00
27	Jno. W. Davis, 1904,	1.00
27	Geo. W. Atkinson, 1904,	1.00
28	W. C. Mann, 1904,	1.00
28	F. L. Blackmarr, 1903-4,	2.00
28	Stuart W. Walker, 1903-4,	2.00
28	D. C. Westenhaver, 1904,	1.00
28	E. Boyd Faulkner, 1904,	1.00
28	W. C. Kilmer, 1904,	1.00
28	Allen B. Noll, 1904,	1.00
28	X. Poole, 1904,	1.00
28	A. W. Burdette, 1904,	1.00
28	C. W. Dillon, 1904,	1.00
28	C. W. Osenton, 1904,	1.00
28	E. L. Nuckols, 1904,	1.00

1904		
July29	H. P. Camden, 1904,	1.00
29	John C. Palmer, Jr., 1904,	1.00
29	A. L. Hooten, 1904,	1.00
29	L. M. LaFollette, 1904,	1.00
29	M. H. Dent, 1904,	1.00
30	H. C. McWhorter, 1904,	1.00
30	W. H. Stokes, 1904,	1.00
30	G. M. Fleming, 1904,	1.00
30	J. M. Woods, 1903-4,	2.00
30	R. W. Dailey, 1904,	1.00
30	J. Howard Holt, 1904,	1.00
30	D. B. Evans, 1904,	1.00
30	Henry C. Hervey, 1904,	1.00
30	C. L. Brown, 1904,	1.00
30	J. F. Barron, 1904,	1.00
Aug. 1	M. D. Post, 1904,	1.00
1	A. C. Nadenbousch, 1904,	1.00
1	Thos. L. Brown, 1904,	1.00
1	Wm. M. O. Dawson, 1904,	1.00
2	Braxton D. Gibson, 1904,	1.00
2	Forrest W. Brown, 1904,	1.00
2	C. O. Streiby, 1904,	1.00
2	A. J. Valentine, 1904,	1.00
2	C. P. Dorr, 1904,	1.00
3	J. F. Strader, 1904,	1.00
3	W. P. Willey, 1904,	1.00
3	Joseph Moreland, 1904,	1.00
3	D. C. Reay, 1904,	1.00
3	Edward B. Stewart, 1903-4,	2.00
3	C. W. Cramer, 1904,	1.00
3	S. F. Glasscock, 1904,	1.00
5	W. R. D. Dent, 1904,	1.00
5	W. G. Wilson, 1904,	1.00
5	J. A. Shepherd, 1904,	1.00
5	J. D. Logan, 1904,	1.00
6	E S.. Doolittle, 1904,	1.00
6	J. H. Miller, 1904,	1.00
6	T. N. Reed, 1904,	1.00
8	Robt. White, 1904,	1.00
8	H. M. Russell, 1904,	1.00
8	J. B. Sommerville, 1904,	1.00
8	B. S. Allison, 1904,	1.00
8	L. F. Stifel, 1904,	1.00
8	Frank W. Nesbitt, 1904,	1.00
8	James W. Ewing, 1904,	1.00
8	Joseph R. Naylor, 1904,	1.00

1904		
Aug. 8	Ferdinand Wingerter, 1904,	1.00
8	R. M. Addleman, 1904,	1.00
8	A. G. Fickieson, 1904,	1.00
8	A. N. Campbell, 1904,	1.00
8	G. R. C. Allen, 1904,	1.00
8	John A. Howard, 1904,	1.00
8	C. P. Flick, 1904,	1.00
8	Geo. E. Boyd, 1904,	1.00
8	C. E. Morris, 1904,	1.00
9	Jackson V. Blair, 1904,	1.00
9	M. H. Willis, 1904,	1.00
10	W. Scott Rucker, 1904,	1.00
11	O. J. Chambers, 1904,	1.00
12	F. W. Clark, 1904,	1.00
13	W. B. Cornwell, 1904,	1.00
13	Samuel V. Woods, 1904,	1.00
13	W. T. Ice, Jr., 1904,	1.00
13	C. F. Teter, 1904,	1.00
16	Andrew Edmiston, 1903-4,	2.00
16	W. B. McGary, 1903-4,	2.00
16	U. N. Arnett, 1904,	1.00
16	John W. Mason, 1904,	1.00
16	B. L. Butcher, 1904,	1.00
16	F. T. Martin, 1904,	1.00
16	E. M. Showalter, 1904,	1.00
18	H. B. Gilkeson, 1904,	1.00
19	Wm. H. Hearne, 1904,	1.00
19	Wm. McG. Hall, 1904,	1.00
19	Chas. B. Johnson, 1903-4,	2.00
19	W. C. Meyer, 1904,	1.00
20	B. B. Dovener, 1904,	1.00
20	Basil T. Bowers, 1904 & prev.,	6.00
22	Richard R. McMahon, 1904,	1.00
23	John M. Hamilton, 1904,	1.00
23	C. W. Lynch, 1904,	1.00
23	M. F. Stiles, 1904,	1.00
25	John D. Alderson, 1904,	1.00
25	H. L. Richards, 1904,	1.00
25	L. M. McClintic, 1904,	1.00
25	W. W. Brannon, 1904,	1.00
25	Romeo H. Freer, 1904,	1.00
25	Jno. R. Koontz, 1904,	1.00
27	G. B. Caldwell, 1904,	1.00
27	T. B. Enslow, 1904,	1.00
27	H. C. Simms, 1904,	1.00
27	Z. T. Vinson, 1904,	1.00

1904		
Aug.27	W. R. Thompson, 1904,	1.00
27	D. E. Mathews, 1904,	1.00
29	M. S. Hodges, 1904,	1.00
Sep. 2	Blaine W. Taylor, 1904,	1.00
5	F. C. Leftwitch, 1904,	1.00
5	Benj. Dailey, 1904,	1.00
19	Chas. S. Dice, 1904,	1.00
19	Jno. A. Preston, 1904,	1.00
24	A. M. Cunningham, 1903-4,	2.00
24	W. B. Cutright, 1904,	1.00
24	Felix C. Pifer, 1904,	1.00
Oct. 5	Chas. E. Hogg, 1904,	1.00
7	W. Dallas Payne, 1904,	1.00
12	J. M. McWhorter, 1904,	1.00
Nov.12	G. W. McClintic, 1903-4,	2.00
Dec. 5	Alfred Caldwell, 1904,	1.00
9	W. G. Brown, 1902-3-4,	3.00
10	B. F. Meighen, 1904 & prev.,	3.00
12	S. S. Green, 1904 & prev.,	3.00
13	John J. Davis, 1903-4,	2.00
13	W. Frank Stout, 1904,	1.00
13	W. N. Miller, 1904,	1.00
14	John T. Cooper, 1902-3,	2.00
14	P. J. Crogan, 1904,	1.00
14	W. G. Conley, 1904,	1.00
14	Harvey F. Smith, 1904,	1.00
14	U. G. Young, 1904,	1.00
14	W. Mollohan, 1904,	1.00
15	H. C. Thurmond, 1904,	1.00
15	V. B. Archer, 1904,	1.00
15	H. B. Woods, 1904 & prev.,	5.00
15	S. C. Burdette, 1904 & prev.,	3.00
16	C. W. May, 1904,	1.00
16	R. G. Altizer, 1904,	1.00
17	P. W. Morris, 1903-4,	2.00
19	James C. Frazer, 1904,	1.00
20	O. S. Marshall, 1904,	1.00
21	T. P. Jacobs, 1904 & prev.,	10.00
21	J. G. St. Clair, 1904,	1.00
21	J. W. Vandervort, 1903-4,	2.00
21	W. E. Chilton, 1904 & prev.,	3.00
23	Jno. J. Coniff, 1904,	1.00
26	W. G. Bennett, 1904 & prev.,	6.00
26	J. B. Bennett, 1904 & prev.,	3.00
	Total	$295.00

Disbursements, Account, West Va. Bar Assn.

1904		Voucher	
Jan. 9	By Check, Hon. E. C. Massie	1	42.80
8	Dr. H. B. Stout, ...	2	5.00
16	Globe Ptg .& Bdg Co., ...	3	2.00
16	Nelson C. Hubbard, Secy., ...	4	40.87
16	West Va. Ptg. Co., ...	5	9.75
16	Edwin Brast, ...	6	13.50
22	M. G. Ambler, Treas., ...	7	190.75
Feb. 1	John T. Harrs, ...	8	85.00
Au. 5	Will A. Elletson, ...	9	9.25
1	G. B. Gibbens, P. M., ...	10	8.00
30	W. Va. Printing Co., ... ($9.75 of Vou.ll refunded)	11	304.55
Nov.24	Angus W .McDonald, ...	12	4.00
Dec.16	C. A. Kreps, ...	13	50.00

Disbursements, Account, "The Bar."

1904		Voucher	
	Balance from 1903		108.95
Feb. 4	By draft W. P. Willey, ...	1	70.00
20	W. P. Willey, ...	2	40.00
Mar.10	W. P. Willey, ...	3	40.00
Apr. 4	W. P. Willey, ...	4	40.00
May11	W. P. Willey, ...	5	40.00
Jun.28	W. P. Willey, ...	6	42.00
Sep. 9	W. P. Willey	7	40.00
Oct.10	W. P. Willey, ...	8	40.00
Nov. 7	W. P. Willey, ...	9	40.00
Dec. 5	W. P. Willey, ...	10	40.00
			540.95

Duly audited Dec. 29, 1904, by the undersigned committee appointed by Executive Council and found to be correct.

B. S. ALLISON,
CHAS. McCAMIC,
Committee.

Mr. B. S. Allison: As one of the committee of two appointed by the Executive Council to audit the account of the Treasurer, I desire to say that that commitee went over the accounts of the Treasurer, took up all his vouchers, looked over the additions, and found them all to be correct. I move, therefore, that the report of the Treasurer be received, approved and filed.

Mr. B. M. Ambler: I second that motion.

President Brannon: It is moved and seconded that the report of

the Treasurer be received, approved and filed. Are there any remarks?

Mr. George E. Price: I do not like the word "approved" in connection with the filing of these reports of these officers. I would like to ask whether it means that we approve all the recommendations they make? For instance, the Secretary had several things that he suggested and recommended. I did not catch all the Treasurer said. It seems to me all that is necessary is to receive a report and file it, and then if any action is to be taken upon the recommendations contained therein, it can be taken separately.

Mr. B. S. Allison: I only intended the word "approved" to be applied to the account, as distinguished from the recognition or reception of the report. I would like to amend the motion by providing that the report be received and filed and that the account of the Treasurer be approved.

Which motion was put by the Chair and carried.

President Brannon: The report of the Executive Council, to be presented by Professor Willey of Morgantown.

Mr. W. P. Willey: Mr. President: This report is in a somewhat fragamentary condition just at present. The Executive Council has not had an opportunity to put it in proper form for presentation, but we can give it to you in a fragmentary way and it will be properly printed. The report is as follows:

REPORT OF THE EXECUTIVE COUNCIL

for the year, 1904.

To the President and Members of the West Virginia Bar Association:

The activities of the Executive Council in the past year have been directed chiefly to keeping the Association alive during the interim of its sessions; and in providing for its profitable and pleasurable entertainment during its annual session. It presents as its principal exhibit, the varied and attractive program for this meeting being the work largely of its resourceful Secretary—and to which it points with pride.

The Council calls attention specially to the new provisions for the nomination and election of the officers of the Association as indicated on the program, which it is believed will meet the approbation of the Association, as furnishing a more careful and discreet plan for the annual elections.

The journal of the Association, **The Bar**, has been conducted during the year, along the lines of its past history. It has now finished its eleventh volume. Six hundred and fifty copies are printed monthly, of which between five and six hundred are distributed to members and subscribers, and the balance go to various libraries throughout the country and to leading exchanges among the legal publications.

Since the subscription fees of members have been drawn through the Treasurer, the Circuit Clerks who formerly collected subscriptions

have apparently ceased to give it attention, probably because the number of outside subscribers in any county is now very small. Out of about 300 outside subscriptions the Circuit Clerks only returned $68.00 during the past year. Unless the Circuit Clerks will come to the rescue, resort will again have to be made to direct collections.

The amount due from advertisers during the year is $121.25, of which $81.00 has been collected.

The expenses for printing have been paid monthly by the Treasurer, whose report will show how that account stands.

The other expenditures are:

For postage and stationery,	$ 8.00
For mailage,	.23.00
For Syllabi Supreme Court	11.00
For Clerical work,	25.00
Total	$67.00

Leaving a cash balance to the credit of **The Bar,** outside the printing bill, of $82.00.

The Executive Council congratulates the Association on the growing prosperity of the organization; on its widening influence in behalf of the interests of the profession and the welfare of the State; and on the promise of greater things in the future along all the lines of its ambition.

The Executive Council submits for the approval of the Association certain amendments to the constitution and by-laws.

In order to encourage and facilitate the work of the standing committees it has been thought best to have the membership of the committees determined and announced so early that each committee can hold its first meeting before the Association closes its meeting and the members disperse. This means that the president who appoints the committees and the Executive Council which approves and confirms these appointments must be chosen on the first day of the annual meeting. For this reason and others a change has been made in the order of business.

It has further been thought wise to have all nominations of officers and of the members of this Council made through a committee on nominations. The intention is not to give such committee any power of choice, but to charge it with the duty of reporting all suggestions made, and of seeing that a suitable nomination is made for each of these places. It is hoped that this will also result in a much more rapid rotation in office.

At the last annual meeting this Council reported as "by-law No. 22" a rule requiring the treasurer to drop from his rolls all members who dishonor his draft for two successive years. This proposed change was in effect an amendment to the constitution and not to the by-laws, and it therefore required a vote of the Associaton which was not had last year. It is now reported as article 22 of the constitution.

The secretary is relieved from the duty to send each member certain notices now given by the Bar.

The changes proposed are as follows:

Article 6 of the constitution is amended to read as follows:

6. At the annual meetings the Association shall elect an Executive Council, to be composed of five members and the president and secretary. The president-elect shall, with the approval of the newly elected Executive Council, appoint the following standing committees, to-wit: A Committee on Admissions; a Committee on Judicial Administration and Legal Reform; a Committee on Legal Education; a Committee on Grievances; a Committee on Legal Biography, a Committee on Banquet.

A majority of of the members of every committee, including the Executive Council, who may be present at a meeting of the Association or at a meeting of such committee held in accordance with by-law No. 8, shall constitute a quorum of such committee.

(The last paragraph of this article remains unchanged).

Article 8 of the constitution is amended to read as follows:

8 The president, or in his absence the vice-president senior in years, shall preside at all meetings of the Association, and the president shall deliver an address at the opening of the annual meeting after his election, which address shall discuss matters of special interest to the people of this state, arising upon legislation enacted and decisions rendered.

Article 17 is amended to read as follows:

17. This Association shall meet annually at Parkersburg, or such other place, and at such time as shall be fixed at each session of the Association. Those present at such a meeting shall constitute a quorum.

The following new provision is added as article 22 of the constitution:

22. Any member of this Association who has dishonored the draft of the treasurer for his annual dues for two successive years shall be dropped from the roll of membership by the treasurer, and if at the end of one year thereafter he shall still be in default for dues his membership shall thereby be forfeited; but if he shall within such year pay all his dues, such payment shall restore him to membership. The treasurer shall report his action under this article to each annual meeting of the Association.

The following new provision is added as article 23 of the constitution:

23. As early as practicable on the first day of the annual meeting the president shall appoint a special committee on Nominations, consisting of five members, which committee shall promptly meet, receive all nominations which may be offered for any office, for membership in the Executive Council, or for election as delegate to the American Bar Association, and shall report to the Association, not later than the

afternoon of the first day, all such nominations, with any others which they may see fit to present.

Section 2 of the by-laws is amended to read as follows:

2. The order of business at the annual meeting, unless otherwise provided by the Executive Council or the Association, shall be as follows:

a. Annual Address of the President;
b. Report of Committee on Admissions;
c. Election of Members;
d. Appointment of Committee on Nominations;
e. Report of the Secretary;
f. Report of the Treasurer;
g. Report of the Executive Council;
h. Report of the Committee on Nominations;
i. Election of officers, members of Executive Council and delegates to the American Bar Association;
j. Selection of time and place of the next annual meeting;
k. Report of Committee on Judicial Administration and Legal Reform;
l. Report of Committee on Grievances;
m. Report of Committee on Legal Education;
n. Report of Committee on Legal Biography;
o. Report of Committee on Banquet;
p. Report of special committees, and at the same time a meeting of the newly elected Executive Council;
q. Miscellaneous Business;
r. Appointment of standing committees.

The address to be delivered by a person invited by the Executive Council shall be at the evening session of the first day of the annual meeting, unless the Executive Council shall otherwise provide. After the reading of the president's address and of each paper, an opportunity for discussion shall be given.

The Executive Council shall publish in the journal at least two weeks in advance of each annual meeting a statement of the name of the person who is to deliver the annual address, and the names of those who are to read papers, and the subjects of each.

Section 6 of the by-laws is amended to read as follows:

6. Except as provided by article 6 of the constitution or by any vote of the Association, the term of office of all officers and of the Executive Council shall begin at the adjournment of the annual meeting at which they were elected; but the term of office of the members of the several committees appointed by the president shall begin immediately upon their appointment.

Section 10 of the by-laws is amended to read as follows:

10. The treasurer's report shall be examined and audited annually before its presentation to the Association by two members to be

appointed by the chairman of the Executive Council or by vote of the Council.

Mr. W. P. Willey: Now, I will leave it to the Secretary to report some memoranda he has in regard to changes in the constitution and by-laws, as he is more familiar with them than I am.

The Secretary, Mr. Nelson C. Hubbard, on behalf of the Executive Council, submitted for the approval of the Association the sundry amendments proposed to the constitution and by-laws in the Report of the Executive Council. After a lengthy discussion the amendments proposed by the Executive Council as above were agreed to;—save that Art. 22 of the constitution as proposed was amended by striking out the words "dishonored the draft of the Treasurer for his annual dues for two successive years," beginning in line one, and by inserting in lieu thereof the words "for two successive years failed to pay his annual dues, having due notice thereof."

President Brannon: Now, gentlemen, we have disposed of these matters separately, recommended by the Executive Council, but the Council makes report covering other subjects. What shall be done with the report?

Mr. E. M. Showalter: I think this report requires adoption and I therefore move the adoption of the report as amended.

The motion was put by the Chair and carried.

Judge T. P. Jacobs: I want to make an inquiry for myself and possibly for the information of others. A Committee on Nominations now being provided for, in what manner shall nominations be made to that committee? These gentlemen who have formulated this measure can give us no information. Shall it be by nominating speeches or how?

Mr. W. P. Hubbard: Any member can hand in your name or any other man's name for nomination.

Mr. L. J. Williams: And then the committee reports that nomination.

President Brannon: As a committee of five on nominations, under this amendment that has just been adopted, the Chair will appoint Mr. W. P. Hubbard, Mr. George E. Price, Judge T. P. Jacobs, Mr. C. W. Osenton and Mr. Wesley Mollohan. This committee will receive and report nominations and make nominations themselves, so far as they see proper.

Mr. W. P. Hubbard: If I remember right the amendment that has been adopted required that committee to make its report this afternoon. If this is intended to operate at once, it will be necessary for that committee to meet this afternoon. I presume I do not venture too much in asking leave for the committee to sit during this session of the Association; and, further, perhaps I do not take too much on myself in suggesting that nominations may be made by any member of the Association handing to any member of that committee, during the afternoon, the name of any person whom he wishes to propose for any

office, and, further, that if any member desires to nominate himself for a position, and cannot get anybody else to do it, that he may nominate himself and the nomination will be received and regarded in the strictest professional confidence.

Mr. B. S. Allison: I move we take a recess for fifteen minutes and give this committee time to meet and report.

Mr. B. M. Ambler: One moment, please, Mr. President; as this is the first time we have had such a committee, and the Association not being prepared for such action, I move that the committee be requested to report to-morrow at noon.

Mr. Ira E. Robinson: I rise to a point of order. The law says that they shall report not later than Thursday afternoon.

Mr. B. M. Ambler: We ought to attend to all this thing in fifteen minutes. My motion is————

Mr. George E. Price: Mr. Ambler is out of order.

President Brannon: I think the committee will be able to report this evening.

Mr. George E. Price: I merely want to make an announcement: In the first place I believe it is understood by all the members that the annual banquet will be held at the Hotel Ruffner, tomorrow evening at 8:30, and that all lawyers from out of town, whether they are members of the Association or not, as I understand it, are eligible to membership in that banquet. I do not know whether there is any lawyer from out of town here who is not a member of the Association, but whether he is or not, the banquet is for all. Charleston members of the bar are not eligible to the banquet unless they are members of the Association. Tickets can be procured from the Committee on Arrangements, and they will be distributed to the members either through the Secretary or through Mr. W. B. Mathews, clerk of the Court of Appeals.

I notice in the paper this morning it was announced that any person would be permitted to attend the address of Mr. Taylor to-night who might be specially invited by a member of the Association. I do not think that has been the rule heretofore. As there are some of our people in town who would like to hear that address and who will not have an opportunity to be invited specially by members of the Association, I have taken the liberty of announcing in the paper this evening that we would like our citizens to turn out and hear that address to-night. It has always been the custom and it is due Mr. Taylor that he should have a full attendance.

Mr. L. J. Williams: Mr. President: I move that this Association extend a general invitation to the public to come out to-night and hear that address.

The motion was put by the Chair and carried.

Mr. Ira E. Robinson: I move that Mr. Williams be appointed to communicate that invitation to the public.

President Brannon: It will be done. Do you mean separately—from house to house?

Mr. Ira E. Robinson: Yes, sir.

President Brannon: By unanimous consent that can be done and he is instructed to make a house to house canvass and extend this invitation.

Mr. L. J. Williams: May I inquire, Mr. Chairman, where the address will be delivered?

President Brannon: In this room, as I understood it.

Mr. L. J. Williams: If I have to go around and drum the people up, I want to tell them where to come.

President Brannon: Next in order is the report of the Committee on Judicial Administration and Legal Reform, which will be presented by Mr. Ambler, of Parkersburg.

Mr. B. M. Ambler submitted the following:

Report Of the Committee On Judicial Administration and Legal Reform.

To the West Virginia Bar Association:

Unable to get action of the entire Committee the undersigned submit this report without the concurrence of the other members:—

First—The Judiciary.

You passed a resolution at your meeting one year ago in these words——

"The Bar Association commends to the people of West Virginia the importance of the judicial office, and the necessity for the greatest care and patriotic effort in the selection of Judges during the coming year throughout the State, and we urge that conventions for the nomination of judges be held separately from all conventions to nominate candidates for the executive and legislative departments of the Government, and for County offices." (Proceeding of 1903, page 48).

A resolution was also passed (page 60)——"That the Executive Council be instructed to urge upon the respective committees of the leading political parties, the holding of separate conventions for judicial nominations."

The matter was urged upon the respective political committees.

A Democratic convention was called shortly after we adjourned and it met at Charleston in April 1904, to nominate delegates to the National Convention, and electors at large, and also to nominate one or more candidates for the Supreme Court.

This arrangement did not bear prima facie evidence of keeping the judiciary wholly apart from politics, but it had been found in several jurisdictions that a division of nominations for judicial office between the parties, each endorsing the nominees of the other for one-half of the positions, had worked well; and this convention held out its offer, that as two judges for the Supreme Court were to be elected

in the fall, the Democrats should name one and the Republicans name the other. And accordingly, it was determined that this Democratic Convention should name one person for judge.

The auditorium in which the convention met, was the leading theatre of our Capital City, and a comic opera troupe had engaged it for the evening of the last day on which the convention sat. The long service and exceptional abilities of Judge Dent early settled his nomination, as a just recognition of his character and qualifications, but the matter was not brought up until such a late hour that it was hardly practicable to attend to the business with becoming grace and decorum. Few then present will forget the pathetic appeal of the Chairman to dispatch the proceedings, as he stated with great feeling, that the scene-shifters were already about to put new actors on the stage.

Finally, Judge Dent was nominated, and the delegates barely escaped being kicked out of the house by the ballet girls.

The Republicans held their State convention in the summer. Many questions of party policy created conditions among them that did not exist in the prior convention of the Democrats; but the Republicans did not adopt the suggestion that the Judges should be nominated by a separate convention, nor did they nominate only one gentleman, so that the nominee of each party should be on both tickets. Their managers had possibly heard how Col. Ingersoll met the suggestion that both parties should disband in 1880, when the Democracy sustained a terrible rout. He said——"This pious appeal by the minority, involves the same proposition that the rooster made to the horse; that the rooster would agree not to tread on the horse's toes, if the horse would not tread on his." One feature may be noted, that the Republicans ignored a rule generally followed in former years, in this; that the judges whose terms were about to expire, resided respectively in the second and fourth Congressional districts, and heretofore the politicians have insisted that judicial fitness must yield to geographical position; whereas, the Republican convention broke that spell by going outside of the fourth district for a candidate.

At the election which occurred in November, the Republicans carried the National ticket by over 31,000, while some of the State officers were elected by far less than that, but the judges for the Supreme Bench on each ticket ran along about even with the Presidential candidates of the respective parties. The thing that interests us is that the Judge ran with his party.

In seeking here to bring together a recital of our efforts and the result, we do not reflect upon men, but upon methods. We believe that the candidates named were unexceptionable, but a political convention is not adopted to the selection of judges, and leaves a matter of highest importance too largely to chance.

Second—Corrupt Practices.

The general results of the past election in the State and Nation, renders possible a consideration of a question at this time, the intro-

duction of which into this body, would ordinarily offend taste and cause dissension—we refer to bribery and corruption at elections. To meet the matter squarely, we do not believe that the sin is practiced by only one set or side. The evidences are too plain not to be understood by the most guileless, and parts of our state have become "a hissing and a by-word" of disgrace, on account of this most fatal and insidious form of treason.

It is not unusual for the members of a defeated party to charge fraud and corruption; but no one who has pride of intellect even, can afford to say that the late election was won only by bribery and corruption.

Money could not carry a movement like this across the continent and down to a given line; and we should hail with satisfaction the demand of President Roosevelt that a higher standard of civic righteousness be enforced by Congress in the electorate.

If at each Court House in West Virginia our lawyers should seriously determine and agree that bribery and corrupt practices at elections shall cease, the thing would stop.

In each circuit we have some lawyer on the bench, and in each County a prosecuting attorney, and we leave these two men to enforce the laws, while the influence of the bar is divided; those employed by the violators of law are very active, the others are neutral unless engaged to prosecute.

Most crimes arouse public indignation, and popular sentiment demands redress; but our laws against bribery in nominations and elections are not enforced, and the effect is in every way deplorable and demoralizing. There should be no class of licensed criminals. There is no power to grant dispensation to enemies of popular government. Where things are so managed that public powers are purchasable, the people are ruled by those who rise by crime, and that spectacle has shaken faith in American institutions in more than one part of the Country.

In time it must spread, raising the brazen and conscienceless, and crippling and weakening the virtuous and true, actually reversing the proper order.

It has not yet so permeated West Virginia. Mountaineers are not so prone to evil ways that threaten the State, but all of us know enough to feel sure that things have already gone too far. If we hope to retain purity in the Courts, honesty in juries and manhood at the Bar, we must line up distinctly and as a unit against this monstrous iniquity. The danger should be demonstrated and the infamy shown in its true light—so odious, that its beneficiaries will be forced to seek civic honors by means less destructive to the Commonwealth.

The lawyers constitute the only profession, each of whose members takes oath for a life service to the State, to uphold and support and obey her laws—a permanent body settled in each county; and if the lawyers in any section lack the ability to influence their fellow citi-

zens on any great question of undisputed right, it is because they are indifferent to duty or unworthy of the traditions and the rank they profess.

This evil has been successfully met in other parts of the world, and we who have the best part, should profit by their example.

We recommend that a "Committee on Election Bribery and Corrupt Practices" be raised, with direction to report facts and suggest remedies at the next session.

Third—Rules and Practice in the Circuit Courts.

A meeting of the Circuit Judges of the State has been called for December 29th, at ten o'clock, during the time of our session, for the purpose of considering and settling rules of practice. This call was made by the Judges themselves, at the request of the Association. We profoundly appreciate their work, and while we would not in any manner trench upon their prerogative, we still presume to make suggestions.

This subject can be reached only by the legislature or by the courts, and in some particulars at least it will be found that legislative aid will be necessary.

The work of the several circuits vary so greatly, both as to volume of business and conditions of attending to it, that it seems impracticable to prescribe details of actual administration to apply to all circuits alike.

Where a circuit consists of several counties, in one or more of which the court sits for a very few days—the assignment of cases and the arranging of hearings present a very different condition from such as exists, say at Wheeling and in Charleston, where the court sits for weeks. Perhaps the discussion of the several needs may lead to some classification. General principles can be at least so far settled as to regulate the maturing of causes and the time and the limits for the taking of testimony in chancery—for settling the practice on motions regarding injunctions and receiverships—the time allowed for filing answers after overruling of a demurrer—the effect of an answer on preliminary motion, etc.

The growing tendency to enlarge litigation in chancery, and the difficulty of getting at the facts by depositions, makes more important the proposition of hearing oral testimony at the bar of the Court in chancery causes. But, will not that course obstruct rather than expedite under our system, where the judge and the chancellor is the same person? Will it not amount to the taking of depositions in the presence of the judge, the case to be held up until the notes are transcribed? Will we not lose more in the delays thus occasioned, than gain in time and from the advantages of having the judge hear the witnesses?

On the other hand will we not obtain greater certainty in the results to get more prompt decisions by submitting the case forthwith on the examination and conclusion of the testimony at the bar of the Court?

Our Code has abolished the ancient effect of an answer as evidence, and gives it the effect similar to that of a plea at law raising the issue as to matters denied, and leaving the burden on the defendant to establish new matter alleged.

We have been so long accustomed to the provisions of our Code regarding answers and cross bill answers, that we may not fully realize the advantages in such simplifying of our equity pleadings; but in abolishing the effect of an answer as evidence in favor of the defendant, and in abolishing the Common Law rule disqualifying a witness on account of interest—we have added to the number of cases in which testimony may be taken, and have vastly added to the number of witnesses examined while stenography multiplies the pages of evidence given. And yet, we have not laid limitations upon the time of taking depositions, nor made definite rules for speeding the cause.

At the World's Congress of Lawyers and Jurists held in St. Louis last September, men eminent in comparative jurisprudence, and representing many different countries, explained their several systems and all agreed that the unsolved problem is how to get the merits of the controversy and the facts before competent and impartial triers. Nor did that Congress agree about it.

You will thus perceive that our troubles are world wide.

May it not be that no one system is best for all that the genius of each people must be taken into account.

The rules in equity prescribed by the United States Court govern alike federal courts in congested centers, and in the wilderness. Some of those rules might be turned to good account in our state practice, after being modified to suit peculiar local conditions. For instance, they provide for taking of testimony by an examiner, and the time for taking testimony after issue joined, and the various methods, of taking evidence under State practice, or upon interrogations by Commission, or by oral examination at the Bar as in jury cases.

There may be some confusion in these rules. They were evidently evolved from the varying methods in the several states and to enable the Federal Equity Court in each State to adapt its practices to local regulations.

Respectfully submitted,

B. M. AMBLER,
E. W. KNIGHT.

President Brannon: What shall be done with the report?

Mr. L. J. Williams: I move that it be received and filed.

Mr. E. M. Showalter: I second the motion.

Mr. W. P. Hubbard: Mr. Chairman, let's talk about it a little while.

Mr. L. J. Williams: I do not want to cut off debate.

Mr. E. M. Showalter: I raise the point of order, "are we ready to

talk about it yet?" Ought we not to have a motion before we begin talking?

President Brannon: Mr. Hubbard may be going to make a motion.

Mr. E. M. Showalter: There is already a motion that it be received and filed. It has not been put and is not before the house.

President Brannon: I will state that a motion was made and seconded to receive and file the report. Are there any remarks on the question?

Mr. W. P. Hubbard: I am very suspicious when two members of one political party openly conspire to throttle debate on this report. As to the Republican convention that Brother Ambler referred to, in order that we may determine and properly receive what he says on that subject, it would be well, I think, to review the action the Association has taken and the opinions it has expressed. With reference to the way in which judges—particularly candidates for judges of the Supreme Court of Appeals—should be nominated, I suppose there really has been no difference of opinion among members of the Association—certainly no such differences as came to the surface—that judges ought not to be nominated upon political considerations by political conventions. We are all impressed with the truth of that proposition. The only difference that I have been able to detect, is, that some of us put a little more emphasis on the proposition in a given year than we do in other years. The emphasis is apt to come a little stronger from the political party which happens to be out for the time being, and therefore this is Brother Ambler's year to be emphatic upon that subject.

The Democratic party through its organization did, as Mr. Ambler says, take steps which were intended at least to result in the nomination of judges at a convention other than that at which the whole State ticket was nominated, and I believe they did nominate one candidate for judge at the convention at which delegates were chosen to their national convention.

Four years ago the Republican party in its convention authorized its executive committee to provide for the nomination of judges by a separate convention—either one whose purpose was entirely distinct from that of any other convention, or at a convention to choose delegates. At the meeting of the Republican State Committee which preceded the conventions of the present year, a committee of the bar appeared and presented through its chairman, Judge Jacobs, most forcibly, the views and wishes of the Bar Association on that question. A proposition was made, first, that an entirely separate convention be called. That received a vote of less than half the committee. Then the motion was made that the Republican party nominate judges for the court of appeals at its delegate convention or at its first convention to be held during the year. On that motion there was a tie vote. If it had received the vote of every member of that committee who was a member of this Association, that committee would have adopted

that order, and nominees for that office would have been designated at that convention. One member of that committee, a practicing lawyer, was himself a candidate for a place on the State ticket. He voted for a separate convention—a convention for no other purpose than to nominate the judges and a proposition which it was known would fail—but when his vote would have carried a proposition to nominate judges at a delegate convention, he voted against it. He did not receive the nomination at the State convention which he coveted. Another influence that actuated two or three members who did not vote against nominating at an early convention, was, that a candidate for nomination for the court of appeals preferred to take his chances in the lottery of an ordinary political convention rather than let his claims be presented to a convention where there was a fuller opportunity to consider them. He did not draw the prize in the lottery in which he preferred to take his chances.

But viewing the whole field, let us ask ourselves how much difference it would have made, whether the nominations for these places by one party or the other had been made at one convention or the other? Is it not remarkable that the list of names presented for the places was so short and that so few of the lawyers of the State were willing to be nominated in connection with those places? Of course the question is whether that list might not have been longer if the nomination were to have been made in some other way; yet I think that one who is at all familiar with the circumstances would find trouble in satisfying himself that the nominations would have been any different if made at delegate conventions than as they were in fact made at the State conventions. What I mean by that is this: That this Association by its organization and direct influence, and perhaps to a greater extent by the efforts of members who have at heart what the Association wants to accomplish, did have a voice which was somewhat potent in the selection of those candidates. Our ends are reached, I think, not always in just the way in which we plan, but we reach them. Men may not have been nominated at the time and in the manner, whom this Association would have preferred as candidates; but if you will look over the list of candidates in both parties and make out, each of you, a list of those whom you would like to have seen nominated, I should be surprised if a majority of you did not put upon the list of those chosen three if not four of those who were actually nominated by the two parties.

If you will bear with me, Mr. Chairman, there is another matter in this report to which I want to speak—a matter at the present moment of more practical importance—and that is to permit me to attempt to reply to some questions as to the methods of taking depositions in equity cases. Heretofore there has been reported to the Association a bill prepared by Mr. Ambler's committee providing that the courts may fix a time within which the plaintiff in an equity case may take testimony and a time within which the defendant must take his in answer and a time within which the plaintiff may reply.

The Association, I think, never has progressed so far as to recommend the adoption by the legislature of a bill which would permit, or, better, require testimony in equity cases to be taken in open court. I have always had a notion that that was the way this thing ought to be done, but since the last meeting of this Association I have seen it actually done and now my notion has become a belief and conviction—that perhaps the greatest economy which could be worked in the every day practice of the law in the State of West Virginia is to provide that equity cases shall be heard in open court just as a law case is tried, except, of course, that it shall be heard by the chancellor and not tried by a jury. That will solve all these questions about when you must take your testimony. Your case is set for trial on a given day and you must have your witnesses there just as you would have them in a law case. The testimony of a witness who is not there could only be read as a deposition in the same way in which it could be read in a law case. You are saved days and days of work and waste of time in taking depositions. The judge presiding while the witness testifies, cuts out all efforts on the part of one party or the other to prejudice the case by testimony that ought not to be admitted. An effort by way of objecting, or suggesting to the witness who is being cross-examined, what sort of an answer ought to be given, would be stopped instantly by the judge. That thing, perhaps, more than any other leads to those altercations between counsel in taking depositions which sometimes have assumed a very serious character in these cases. Under our present system days, weeks and months are spent in taking depositions out in the country with a result which does not present to the court the truth as seen by the witness, as it would be by the witness talking face to face with the judge and with the eye of the judge looking into the witness's eye.

I happened to be concerned in an equity case in Pennsylvania a few months ago which tried, according to our methods, I am sure would have lasted over eighteen months and it would have involved thirty or forty days of solid work by counsel, and I am sure that the expense of taking the testimony would have been very large. That case was tried by a Pennsylvania judge sitting in equity in a day and a half. The witnesses were there; the judge ruled on the evidence that was offered just as if it was being offered to a jury; exceptions were saved in the same way and no trash got into that case or upon the record of it, and when it was through the defendant said that the plaintiff had not made a case upon his own showing, but under the provision of the Pennsylvania rules it was argued for two hours, perhaps, by counsel—the argument involving the real merits of the case, the court adjourned on that day and the second day thereafter came in with an opinion and decree. That was about the extent of the trial in that case—the hearing of testimony and not exceeding two days' work disposing of it—and it was very much more satisfactory and just as effective as a decree that could have been rendered by any court in this State after the long continued proceedings which would have been

necessary, or at least which would have been had in such a case under our practice. Now, when I saw that thing done in that way—all the matter that had no concern with that case kept out of it, and that case thoroughly tried in every respect by that judge—and saw that decision reached in that way, I became thoroughly converted to the idea that the best thing this Association can do in a practical way for the benefit of the State, of their clients and of themselves, is to adopt that Pennsylvania practice in the trial of equity causes and I hope this Association may consider this matter thoroughly, and if it be of that opinion, that it take steps by which legislation may be had to produce that result.

Mr. W. P. Willey: I would like to ask you if you think our circuit court judges would have time to do that?

Mr. W. P. Hubbard: In the case I refer to it took much less time to hear the testimony than it would have to read depositions and the judge knew a lot more about the case than any judge could have known by reading the depositions of witnesses.

Mr. Mollohan: As usually taken?

Mr. W. P. Hubbard: As usually taken, yes; and I would go farther and say as ever taken.

Mr. Ira E. Robinson: Wouldn't you first have to have some legislation and some rules of court established by the judges now meeting here, whereby we would have a better system of setting causes for trial without keeping our witnesses for days as we do up in my part of the State?

Mr. W. P. Hubbard: That is a matter for you gentlemen in your part of the State and the judges in your part of the State to look after. I can conceive that conditions are different in different parts of the State. We have no such trouble. A case is set for a given day and as almost all the witnesses reside in the city of Wheeling, when it is seen on the morning of that day, or very likely the afternoon before, that the case cannot be reached, an order is entered setting it for a later day in the term, the witnesses are notified, their time is not wasted and litigants are not put to the expense of their attendance.

Mr. L. J. Williams: I would like to ask you, Mr. Hubbard, how many states besides Pennsylvania have that practice that you have spoken of?

Mr. W. P. Hubbard: I do not know. My impression is that for a great many years testimony in English chancery cases has been taken in open court. I want to say that if the case referred to, as I understand it, had gone further—that is, if the judge had not been of opinion that the plaintiff's failure to make his case was obvious—all the testimony would have been written out, and if the question was one that the judge regarded as important he might have waited until the testimony was written out, or read over such parts as he thought important, and that might involve a delay ordinarily, as I was in-

formed, of about two weeks. A decision in the most complicated equity case would be made in two or three weeks.

Mr. George E. Price: There is another suggestion: It has always occurred to me that one difficulty about this is the difficulty that we have in jury trials. One of the differences between the practice at law and the practice in equity under our system is, that when you get ready to try a jury case you have got to have all your evidence in hand at once. If there is anything lacking which you have overlooked, you get beaten, frequently, because you have overlooked it and because in the development of the trial it appears to be relevant and important, whereas it did not occur to counsel beforehand, and right often cases are lost and an injustice done simply because of that fact. You cannot send to get witnesses, or a paper, or hunt up something that has been suggested which you would probably know to be true but you haven't the evidence right at hand.

Now, that is one of the difficulties. In our practice at law and in our practice in equity we find that difficulty. Now, in the taking of depositions the plaintiff can offer such evidence as he has at hand before a Notary and then adjourn over until he can get his other witnesses; and cross-examination may develop certain things which he finds he will need; so when the defendant has introduced his testimony and closed it, the plaintiff has an opportunity to look around and gather up the evidence which will meet that. Of course that involves delay—it is one of the causes of delay—but are we not going to sacrifice that element of certainty of getting at the truth in equity practice which we fail to have reached even in trials at law? If you have to get ready for trial before a judge, just as you do before a jury, your opponent will certainly feel that perhaps you are not ready and will press you for a trial. Are we willing and is it best to give up the advantage which I have suggested in equity practice for the other advantages that are supposed to come from this new practice? I suggest that because I have not had any experience in this line. I do not know whether any provision is made for the judge on application to lay the hearing over—and I see no reason why he could not do that—to take further testimony, it being made to appear that for some reason the evidence was not at hand. I can see why that could not be done with a jury trial because you cannot hold your jury over from one day to another and from week to week; but a judge might carry the case over.

Mr. W. P. Hubbard: That objection could certainly be obviated in that way, by the judge, upon very good cause being shown. In case it would appear that a real injustice would happen to the litigant because that testimony had, without his fault, not come into the case, it might be taken care of in that way; but I think in any sort of a case you may have in mind, you cannot imagine any kind of a case, or I cannot imagine one, in which there would not be some slip on the part of counsel, no matter whether he would take six, twelve or

eighteen months to mature his case. You may take testimony in your chancery case after you have submitted it. In the argument of that case there may come to your mind something that you might cover by additional testimony you might take. That is a thing you cannot take care of in all cases, but I think there will be much less danger of trouble of that sort in an equity case than in a law case for this reason: I think surprises of that sort come about in the trial of a law case largely because they are so often tried on an issue that is entirely too general, and you are not advised beforehand in the pleadings of the various shapes which that case may take upon which evidence such as you have in mind would apply; but when you come to the hearing of a chancery case in which the parties are expected to and ordinarily do express—with all native eloquence with which their counsel are possessed—in their bill or answer every possible phase of the case which they think may impress the court, I think it is very much more unlikely that in such a case there would, after the hearing, come to the knowledge and attention of counsel questions which have not been covered, than in fact do come to their attention during the trial. The issues are sharply defined; they are all present; parties are not willing to run the risk of taking their case to a hearing without their bill or answer setting forth everything they can think of in that case. I do not believe that difficulty would be nearly as likely to occur in an equity case as in a trial at law.

Mr. J. W. Vandervort: I would like to ask one question. What would be your method of trying and disposing of cases that usually go to master commissioners—those involving complicated accounts?

Mr. W. P. Hubbard: What would you do with an action at law that involves a complicated account?

Mr. J. W. Vandervort: You often lose it by submitting it to a jury, you know.

Mr. W. P. Hubbard: And you often lose it by sending it to a master. The statute now provides that where a complicated account occurs you may refer the account to a master at law.

Mr. J. W. Vandervort: If the account should be so complicated that it should properly be settled by a commissioner who would have more time to give it proper attention, in what way would exceptions be taken advantage of before a court unless the evidence was in some way put in written form?

Mr. W. P. Hubbard: What I am suggesting contemplates that the evidence shall always be reduced to writing. Perhaps I did not say so, but in the trial I have referred to before that judge the testimony was reported stenographically. If the case should be a troublesome one, the judge would have to wait until the testimony was written out and submitted to him. That testimony is then just as much a part of the record as depositions under our system are a part of the record.

Judge M. F. Stiles: I would like to add a few words in approval of the remarks of Mr. Hubbard in reference to the subject under discussion. I have had some experience in the taking of depositions and some experience in the trial of chancery cases in open court just as law cases are tried; and I concur in the belief expressed by Mr. Hubbard that evidence, or that which is offered as evidence, is often offered before a Notary or a commissioner that never would be offered to a judge who has the power to exclude; and records are often encumbered by documentary and oral evidence that counsel must know and do know is improper, and it is introduced in the hope that notwithstanding it is improper, it may produce the effect of legitimate evidence in the case. That is one reason to my mind, and a very potent one, that gives the advantage to a trial in open court.

Mr. George E. Price: May I ask the Judge a question?

Judge M. F. Stiles: Certainly.

Mr. George E. Price: How is a judge going to rule upon a question of evidence unless you let him know what the evidence is, and if you let him know what it is going to be, haven't you had the same effect upon him as if you had gotten it in? Isn't it the ruling of our court along that line that it is not error in the judge hearing a case orally to refuse to exclude improper testimony simply for the reason that he is supposed to be able to sift the good from the bad, and therefore what is the point of the judge's ruling upon proper or improper testimony when you have discussed the matter before him?

Judge M. F. Stiles: That difficulty, of course, would not be entirely obviated. The evidence would often be presented, but very often evidence would not be presented, and a lawyer would hardly submit to a court, perhaps, as competent testimony, what he would endeavor to get in before a notary or a commissioner. That, of course, is only one point in this matter.

Mr. Elliott Northcott: Isn't it true that the answer to that would be that the letting in of this evidence would be along a certain line, and the judge indicating that that line should not be followed, that it would be stopped and lots of time would then be saved.

Judge M. F. Stiles: Undoubtedly so. Of course objections and exceptions would be taken and are taken where that practice is followed, so that if the court improperly rejects evidence you have your remedy.

Mr. W. G. Mathews: Isn't it also true that by sustaining an objection to an improper question, improper evidence itself would never get before the judge or in the record in any way.

Judge M. F. Stiles: Certainly so; and your exception could be preserved if you thought there was anything to it, by stating, as you do now, the answer that you expect from the witness and that question going upon the record. Of course there might be trouble such as Mr.

Price suggests; but the court should always be vested with discretion. There is but one man to wait—not one and twelve besides—and if counsel should be surprised, which is not likely under equity pleadings to be the case, the chancellor can delay the hearing until other witnesses can be brought in. Where witnesses might have to be brought a very great distance, perhaps it would not be advantageous, but in an ordinary equity case there is no difficulty.

Mr. W. P. Hubbard: You cannot require a witness to be brought in in an equity case any more than in a law case, and in that event you could take his deposition.

Judge M. F. Stiles: Well, it might be proper to take his deposition under other circumstances than would be applicable to a law case. Now, the practice in Massachusetts is to go in and try your equity case before a chancellor and examine your witnesses just as if it were a jury-waived case at law. That is also the practice in California. I recollect a case in which we were six days trying a chancery case in court—in the examination of witnesses—that in this state could not have been tried in six months, the number of witnesses being very considerable, and in two or three weeks from the time—at least within a month from the time—the bill was filed, there was a decree. Now, that would be impossible under the practice in this or any other state in which chancery cases are tried from depositions. From practice and from reasoning I am led to concur very strongly in the views expressed by Mr. Hubbard, and I would be glad to see proper legislation on the subject, and I would like to see it go out from this Association that if it didn't require that it would at least permit in the discretion of the judge, chancery cases to be tried in open court and the testimony taken down and preserved by a stenographer.

Mr. Ira E. Robinson: If I may be pardoned I want to say that I think we have had almost enough of this business of patchwork in legislation. In the general session of 1903 there was a bill for four terms of court, which I opposed strenuously, because I thought that before we had a thorough revision of our practice in the courts of West Virginia it was unnecessary and impracticable. Now, I suppose every man here agrees with me that we could improve by this system wonderfully but it would simply be patch-work. I do not understand why this good committee that we have on Judicial Administration and Legal Reform cannot take the time and go over the whole subject, and put it in tangible shape, and submit it to this meeting. Now, I am sorry they didn't take time to do it and submit a measure looking to a revision of the practice, a revision of the making up of the docket and the maturing and setting of cases for trial, and a revision as to the trial of cases such as has been discussed here; but I do not believe, gentlemen, that this one particular patch ought to be put on now unless you take up the whole system; because it only needs an association like the Bar Association of West Virginia to go at this matter in order to get it through the legislature and in tangible form. I under-

stand there would be no constitutional restrictions that you would run up against in making a thorough revision of the practice in West Virginia. My Brother Ambler writes a good report and I know he could prepare a good revision. We have had a revision of part of our code and certainly we could have a thorough revision of another part. I do not understand that the four terms of court will do us any good until we can mature cases a good deal more rapidly than we can now.

Mr. W. G. Mathews: Some of the remarks Mr. Robinson has made were just along a line that I was going to suggest. We have had so many instances of crude legislation resulting from a sincere desire to effect reforms that I do not think, as he says, that the question should be taken up so late in the afternoon as it is now, with the hope of getting any definite action. It was my intention to suggest, or put in the form of a motion, that the committee whose leading member has suggested and brought on this discussion—that it be referred back to that committee with the request that they draft (if they cannot do it for this annual meeting then for the next) a bill embodying the purposes which the report suggests and which Mr. Hubbard has pointed out. I can readily see how the substitution of oral testimony entirely for depositions in chancery causes may effect other provisions than the direct one. For instance it might well be said that in order to mature cases more rapidly two rule days instead of one might be had; it might be well said that half a dozen other provisions might be offered in accordance with the long line of reform now under discussion. I therefore had intended to make a motion, or at least a suggestion, that the matter now under discussion be referred back to the committee from which it emanated, with directions from the Association to formulate such a bill, if possible, at the present session, and if that cannot be done, that they have it ready for the next meeting of the Association.

One other thing suggested by Mr. Price: He has said, and very pertinently that our supreme court has ruled that any improper evidence brought before a judge will be presumed by the supreme court, in review, not to have influenced him; that he would be presumed to have sifted out the good from the bad, giving heed to the good and disregarding the bad, and that the admission of the testimony would not be error, and therefore he argues that the record would not be held down as particularly and as rigidly as it otherwise would be. I will suggest, Mr. President, that that would not be the case and for this reason: that very frequently—particularly in the majority of cases in which the record is needlessly encumbered before a notary or commissioner—it is by questions to which any answer would be incompetent, illegal and inadmissible and frequently in cases where the witness is incompetent to testify as to the matters embodied in the question. Now, in either of those classes of cases the trial judge would and should prevent any answer being given by the witness in this regard, to the extent, at least, that he should be held down to the

lines that the laws of evidence prescribe, and therefore to that extent— whatever that extent would be—the difficulty suggested by Mr. Price would be obviated by taking the evidence in the manner suggested.

Mr. L. J. Williams: Would it not be well to take the sense of this Association on the proposed amendment? Then if it is the wish of the Association that such a reform be brought about, we can carry out Mr. Mathews' suggestion by referring to this committee with instructions to draft such a bill or bills, and present them to the legislature at its next session, as will bring about the desired reform. I do not concede that where evidence taken before a judge and an improper question is asked—a question which would imply an improper answer —that it would not have the same effect as the court of appeals has now said it would have upon the judge in reading depositions, because there he is presumed to expunge from the evidence that which is improper; but under the law as reformed, if a man asks an improper question and objection is made and the judge still allows it, it shows that he was in error in admitting what was not proper and taking it as proper, and therefore it might influence the decision of the court of appeals.

I move, now, that this Association express its approval of the reform in our chancery practice that has been suggested in the paper and so ably discussed by Mr. Hubbard, Mr. Price and Mr. Mathews.

Mr. Wesley Mollohan: I second the motion, and I desire to say that what little law I ever read I read in a code State—the State of Ohio—where this practice prevails and has been adopted for years and years. I have seen its operation in the trial of chancery cases in the State of Minnesota, where I was concerned in a case, and I have seen it much followed in the State of Kansas where I unfortunately own a farm and I have frequently had to go there. I have been interested in their courts, there, and unfortunately in litigation, and I am free to say that there is no lawyer living in our State who would see that practice followed in court five days who would not be heartily in favor of it. He would not see it followed in more than one case in their court until he would be heartily in favor of it.

Now, I remember one time, when I was reading law, of a very noted case involving the question of a fraudulent conveyance. The evidence in that case was taken before a judge; there were summoned there, backwards and forwards, ten or twelve witnesses; the plaintiff presented his evidence and then the defendant who, it was charged attempted that fraudulent conveyance, was called up himself, and right there before that court he was made to state the facts. He was not allowed to dodge them, as he would have done before a commissioner where he would have talked about everything else. After he had made the statement as to that conveyance his own counsel never called a single witness because his own testimony decided the case against him. And that is frequently the case.

Now, certain objections are urged against this system. They all disappear; they all disappear. Take this great mass of States where it is the practice and see its operation and benefits. It has even been adopted in the Federal courts. Their statute permits it and they adopted it. Now if all those serious objections, or supposed objections, had existed, and there was any force in them, they surely would have changed the system; but in actual practice they do not amount to anything any more than they do in the trial of cases at law.

This whole system that we have of taking depositions in chancery cases before notaries and before commissioners and before justices of the peace, turning both sides loose to introduce all the witnesses they please and to introduce everything they please, is simply nonsense, and that is all there is of it. They drag you around through the country week in and week out to attend the taking of depositions that haven't one particle of merit in them. Now, I have often seen that illustrated in the hearing of chancery causes before Judge Guthrie. He had a remarkable faculty for the disposition of chancery cases, and he required the briefest statement of what the controversy was about and what its bill alleged. "Now, there," he would say, "that is the issue between you gentlemen. Now, where is your evidence?" Counsel would commence to read the usual lot of stuff that was taken before a notary public, or a commissioner, or a justice of the peace out in the country, and the Judge would say "Omit that; it has nothing to do with the case. So omit it and go on to something else." Now in the end, he got that case right down where it would have been if those witnesses had come before him. And it is surprising, after you have taken a whole mass of evidence in a chancery case—it is surprising how little of it has anything to do with the controversy; there is probably not over a tenth that has anything whatever to do with it, and the result is we have just wasted our lives running out to school-houses and to country stores and one place and another and sitting there day after day hearing testimony in chancery cases that was absolute trash. Isn't that so, Brother Ambler?

Mr. B. M. Ambler:* I was paid for it.

Mr. Wesley Mollohan: Absolute trash. Well, were you satisfied to do it even if you were paid for it? It is the most draining thing a man get into.

Mr. W. E. R. Byrne: Conceding all the benefits that might follow from the proposed change, would it not very materially lengthen the term of our courts, and would we ever get through in Kanawha county?

Mr. Wesley Mollohan: Why, we have increased the number of terms, which would help the matter materially. For instance, now, they will try their cases in the State of Ohio and in these Western States much quicker than we do. It is not only the time of the court that is taken up, Brother Byrne, but it is the time of the lawyer—his time is taken up. Now if he can go into court under the system we are

discussing, and in one day the competent evidence is heard and the case is disposed of and ended, isn't that much more satisfactory than it is to lie around a country school house, or some other place, day in and day out, and eat something that will destroy your stomach—

A Voice: And drink something a good deal worse.

Mr. Wesley Mollohan: Yes; as has been suggested; drink something a good deal worse. Now, I just say simply this, in comparing the two systems: I haven't a particle of hesitancy in saying that ours —and there I will omit one word I would like to put in but I will leave a place and you can put it in—Our system is simply———; but it has come down to us and we ought to get rid of it.

Mr. E. M. Showalter: I believe that this matter should be made in just a little more tangible and definite shape. I have no doubt Judge Williams will agree to the amendment which I propose to offer as a motion. I am very slow, personally, to acknowledge that any changes ought to be made in laws. I would rather be an obstructionist than one who advocates frequent changes in the law; but it certainly seems—and I believe we can nearly all agree to it—that this is one of the most important reforms that has been proposed in this Association along the lines of legal procedure in many years. There are not many differences to be brought together by the committee. I do not see any necessity for a report to be made by this committee at some future session of this Association. I believe that this Association is practically ready to declare in favor of the principal proposition, and, if so, it occurs to me that they might as well declare upon it an a way that will be fruitful of results. Therefore, I move an amendment to the motion by offering as a substitute that this proposition be referred to a special committee consisting of Mr. Ambler, the chairman of the regular committee, Mr. W. P. Hubbard and Mr. Mollohan with directions to prepare and submit to the legislature at its coming session a bill or bills carrying out the provisions of the recommendations of the committee upon this proposition.

Mr. B. M. Ambler: Leave me out of that, please.

Mr. L. J. Williams: I will cheerfully accept the amendment with the consent of my second, Mr. Mollohan. He is also upon this committee and I suppose it will put him in a position where he can carry out his views more fully than if he was not on the committee. I therefore will take the risk of accepting the amendment in his absence.

Mr. E. M. Showalter: At the request of Mr. Ambler, I withdraw his name from the committee as it will not be convenient for him to serve and I will substitute the name of W. G. Mathews.

President Brannon: The question is upon the substitute offered by Mr. Showalter. Are there any remarks?

Mr. B. M. Ambler: I move as an amendment that this subject be made the special order for to-morrow at half past 11 o'clock.

President Brannon: I understood this matter was presented in the form of a substitute to Mr. William's motion and it is to the effect

that Mr. Hubbard, Mr. Mollohan and Mr. W. G. Mathews be appointed a committee to whom this whole matter is to be referred with instructions to report such bill or bills as may be necessary to reflect the wishes of the committee.

Mr. L. J. Williams: I beg leave to withdraw my motion in order that Mr. Ambler's proposition may be put, and that is that the further discussion of the matter be deferred and made the special order for to-morrow morning at 11 o'clock.

President Brannon: Still this proposition is before the house.

Mr. E. M. Showalter: Yes, sir; it is before the house but Mr. Ambler's motion is that the consideration of this proposition be made the special order for to-morrow morning at 11 o'clock.

Mr. L. J. Williams: I understand the reason he makes that motion is because so many of the members are absent at this time.

President Brannon: Do I understand you that you want to postpone a consideration of the whole subject until to-morrow morning at 11 o'clock?

Mr. B. M. Ambler: No, sir; that the vote be taken then.

Mr. James F. Brown: **Mr. President**: I did intend to remain quiet and not engage in this discussion, but all at once it has taken this serious turn of a motion to refer to a committee for immediate report and to request immediate action on the part of the legislature, and it seems to me that it behooves me to no longer remain silent. It seems to me further, that this matter is one of exceeding seriousness and one that this Bar Association wants to consider much more carefully than it has been considered this evening. It seems to me, further, that it would be well to let it go to a committee to report at the next annual meeting and submit its recommendations and then the recommendations of this Association can be made at the succeeding term of the legislature. There is nothing like second wind when you come to uprooting the law or changing the result of the experience of generations. It is a matter too serious to deal with in this light way. It brings the Bar Association into disrepute; it weakens its influence. There is already a feeling among some of the people of the State and some of the bar of the State that our Association drifts too much into a hot bed for foreign and unexpected isms and fads, to be presented to the legislative body to be enacted into law and then reap at our leisure the fruits of ill considered legislation. If the members of this Association will for a moment consider their experience at the bar in the trial of cases upon the law side of the court and upon the equity side of the court, and consider that the main difference between the two is the mode in which evidence is taken and perpetuated, and how, when they have a good case and want to present it and want full advantages upon the real facts, they seek the equity side rather than the law side, they will think for days before wiping out that distinction. It is a matter of too much importance, I say, to be treated in this

casual way; but whatever is done I would suggest that the gentlemen making the motion modify it and separate the names of the committee from the resolution. A vote against such a resolution as has been proposed might be considered as a vote against it because of the personality of the gentlemen to whom the matter is referred. There ought to be no such connection between the subject matter and the committee. Let the resolution be a resolution to do it; then by a subsequent resolution, if that would be carried, a committee can be appointed. I know you have good men named but I fear that each one of them has prejudged the case.

Mr. L. J. Williams: I do not wish to detain the Association long. I do not know whether Mr. Brown was here during the whole discussion of the subject or not.

Mr. James F. Brown: I was.

Mr. L. J. Williams: The proposition does not endeavor to wipe out the distinction between chancery and law practice at all. It preserves the evidence in chancery cases just as is done now, except that the evidence is taken by a judge instead of by a commissioner, notary or justice of the peace as we now do under the law.

President Brannon: The motion now before the house is to defer the whole matter until to-morrow morning at 11 o'clock and that is the only motion before the house and I suppose we are ready to vote on it; then we can take it up again at 11 o'clock to-morrow and get a fuller expression of opinion on the subject.

Mr. E. M. Showalter: In response to the criticisms of Mr. Brown upon the motion, which I think is a just one, I want, with the consent of my second, to separate the propositions and move that this committee shall consist of three instead of naming them.

President Brannon: You withdraw the names, as I understand and simply move that a committee consisting of three be appointed.

Mr. E. M. Showalter: Yes, sir.

Mr. Nelson C. Hubbard: If we are going to make an effort to hold an election for officers to-night, I think we should get at it, and therefore I move the previous question on this whole matter.

President Brannon: The previous question has been asked for.

Col. Robert White: Please state the previous question.

President Brannon: The previous question is that we defer the whole matter until to-morrow morning at the hour named, for further discussion.

The motion for the previous question, being sustained, the main question was put by the chair and prevailed, and the chair declared that the further discussion of the matter would be made a special order for to-morrow morning at 11 o'clock.

Mr. Nelson C. Hubbard: I move that the Committee on Nominations be invited to make its report, as I see it has returned to the room.

President Brannon: The motion is that unanimous consent be given to change our order of business and receive the report of the Committee on Nominations. If there are no objections the report of the committee will be received.

The Secretary read the report of the committee.

Mr. B. M. Ambler: The time has come for adjournment, and I move that action on this report be made a special order for tomorrow noon.

Judge T. P. Jacobs: I suggest that we have a very thin house at this hour and we ought to have unanimous consent to make the report of this Committee on the Nomination of Officers the first thing for tomorrow morning at 10 o'clock. Cannot we have unanimous consent? More than half of the members have gone. I ask unanimous consent to make the report of this Committee on the Nomination of Officers a special order for 10 o'clock, sharp, to-morrow morning.

Mr. W. P. Hubbard: Allow me to suggest that if we can get far enough along to elect a President to-night, the rest might be deferred until tomorrow; the President will then have time to make up his list of committees.

Judge T. P. Jacobs: The difficulty about that is that the house is practically gone. This is the most important office, probably, on the list, and the gentlemen who are absent will be deprived of the privilege of helping to select a President.

Mr. B. M. Ambler: I believe a motion to adjourn is always in order, and I move that we adjourn to meet to-night to hear the address of Mr. Taylor.

The motion was put by the chair and carried.

FIRST DAY; EVENING SESSION.

The Association met in the Federal court room on Thursday evening at 8 o'clock and was addressed by Honorable Hannis Taylor, upon the subject of "International Arbitration."

At the conclusion of the address, on motion, the thanks of the Association were tendered to Mr. Taylor and he was requested to furnish a copy of the address for publication in the proceedings of the Association. (See appendix II.)

SECOND DAY; MORNING SESSION.

The Association met, pursuant to the adjournment of yesterday, in the Federal court room in the city of Charleston, on Friday December 30th, 1904, and was called to order by President Brannon.

President Brannon: Gentlemen, I desire to request that those who have not secured tickets to the banquet will do so as early as possible by making application to the clerk at the desk, who is desirous of knowing how many will attend the banquet, as soon as may be, so that the facts can be communicated to the gentlemen who have the matter in charge.

Mr. W. B. Mathews: Mr. President: Before proceeding with the regular order I desire to make a further report from the Committee on Admissions.

President Brannon: If there is no objections the report will be received.

Mr. W. B. Mathews: I hold in my hand the application of R. F. Dunlap of Hinton; R. M. Baker of Huntington; John L. Whitten of Point Pleasant. These gentlemen have complied with the requirements of the constitution and the committee takes great pleasure in naming them for membership in this Association.

Mr. W. D. Payne: I move that the Secretary be instructed to cast the ballot of the Association for the three gentlemen named.

President Brannon: The motion is that the Secretary be directed to cast the ballot of the Association for the three gentlemen proposed. Are you ready for the question?

The question was put, the motion prevailed and the Secretary cast the ballot of the Association and reported the unanimous election of the gentlemen named.

President Brannon: The next thing in order is the

Election Of Officers.

The election of officers was held with the following results:

President—Judge John W. Mason of Fairmont.

Vice-Presidents—First District, B. S. Allison of Wheeling; Second District, Ira E. Robinson of Grafton; Third District, W. E. R. Byrne of Charleston; Fourth District, W. E. Haymond of Sutton; Fifth District, A. D. Preston of Fayetteville.

Secretary—Wm. G. Peterkin of Parkersburg.

Treasurer—W. N. Miller of Parkersburg.

Executive Council—W. P. Willey of Morgantown; B. M. Ambler of Parkersburg; Henry M. Russell of Wheeling; C. W. Dillon of Fayetteville; W. E. Chilton of Charleston.

Delegates to the American Bar Association—James F. Brown of Charleston; Nelson C. Hubbard of Wheeling; W. G. Bennett of Weston.

Fairmont was chosen as the place where the next annual meeting of the Association shall be held, the time to be fixed by the Executive Council.

The President: Gentlemen; Mr. Taylor to whose able, exhaustive and elegant address you listened so attentively yesterday evening has just come into the room. He was here yesterday and I intended to introduce him formally to the Association then but he left before I had an opportunity to do so. I desire to introduce him to the Association to-day and to express pleasure in doing so, and to remind the Association and our esteemed friend, Mr. Taylor, that under the constitution of our organization he is entitled to the privileges of the

floor. He will remain with us, as I understand, until to-morrow.

Hon. Hannis Taylor: I just want to say in expressing my gratitude for this cordial reception that the President privately has extended to me a privilege which is more gratifying than the privilege of the floor this morning. He says he is going to give me the privilege of the floor and a bed to-night if I will stay to the banquet, and, if necessary, that I shall have the services of a special committee to take me to the train. I have already retained my berth; so I expect to be with you to-night and shall accept those tender offices at your hands if necessary.

President Brannon: I shall have to correct our friend in one respect, and that is, that we do not use beds on the night of the banquet. We have with us on this occasion a gentleman of great distinction and renown in our part of the State and I know he is known all over the State as a judge noted for his impartiality and integrity, and I think the Association could not possibly have done better than to have honored him, as it has done, by electing him President of this body. I take great pleasure in introducing Judge John W. Mason, of Fairmont, as the next President of this Association, and shall also take occasion to suggest that he is ready, as I am informed, to announce the committees that he is required to appoint under the Constitution and By-Laws of the Association. Judge Mason will now have an opportunity to make these announcements, which are very important.

Judge John W. Mason: I have just been informed that it is a rule, and probably a regulation of the Association requires it, that the committees appointed by the President shall be approved by the Exeecutive Council before they are announced; therefore, I shall defer announcing the committees until they shall have been passed upon by the Executive Council. I understand they will be ready in a few minutes.

I want to say, gentlemen, that I thank you very heartily for the compliment you have paid me. I know myself better than you know me—better, even, than my distinguished friend the President knows me—and therefore I know you have made a mistake. I shall do, however, the very best I can, and with the aid and assistance of the other officers of the Association shall endeavor to make the next year a success as far as it is possible to do so.

The Executive Council reported that they had approved the committees as made up by the newly elected President, whereupon, Judge Mason announced the same as follows:

Admissions:

A. L. Lehman, Fairmont; Geo. B. Caldwell, Wheeling; C. W. Dillon, Fayetteville, W. E. Haymond, Sutton; J. Hop Woods, Philippi.

Judicial Administration and Legal Reform.

B. M. Ambler, Parkersburg; John Bassell, Clarksburg; W. P.

Hubbard, Wheeling; E. W. Knight, Charleston; Z. T. Vinson, Huntington.

Legal Education.

St. Geo. T. Brooke, Morgantown; B. L. Butcher, Fairmont; J. W. Davis, Clarksburg; C. W. Dailey, Elkins; Ira E. Robinson, Grafton.

Legal Biography:

Robert White, Wheeling; H. C. Simms, Huntington; T. L. Henritze, Welch; W. Mollohan, Charleston; P. J. Crogan, Kingwood.

Grievances:

Thos. P. Jacobs, New Martinsville; Geo. E. Price, Charleston; H. B. Gilkeson, Romney; C. J. Faulkner, Martinsburg; S. V. Woods, Philippi.

Banquet:

E. M. Showalter, Fairmont; F. T. Martin, Fairmont; John L. Lehman, Fairmont; U. N. Arnett, Jr., Fairmont; B. L. Butcher, Fairmont.

Mr. George E. Price in the chair.

Mr. W. W. Brannon: I have called my friend, Mr. Price, to the chair for a moment. I desire to offer a resolution requesting our members of the Senate of the United States to employ their endeavors in securing the ratification of various treaties, now being negotiated, and to be laid before the Senate in a short time. As I said before I have a resolution which I desire to offer and which I would be pleased to have endorsed by the Bar Association. I would like to see this Association take a decided and advanced step on this matter of settling disputes between the powers of the earth by arbitration instead of by war. The resolutions are in my hand writing and I will read them instead of handing them to the Secretary.

WHEREAS we believe that international arbitration is the proper method of settling international disputes.

AND WHEREAS certain treaties of arbitration are now being negotiated by the Government of the United States with France, Germany, Great Britain, Mexico and various other powers, which are soon to be submitted to the Senate for its action.

THEREFORE, BE IT RESOLVED, That the Senators of this State be requested to use their influence to secure the ratification of said treaties by the Senate of the United States, or such other treaties as may be calculated to promote and secure peace in the world by international arbitration.

RESOLVED FURTHER ,That a copy of these preambles and resolutions be sent by the Secretary of this Association to each of our Senators as soon as the Association shall adjourn.

Mr. W. W. Brannon: Now, I offer these resolutions as a result of considerable correspondence between me, as the President of the As-

sociation, and the gentlemen composing the American Conference on International Arbitration. A number of distinguished and patriotic gentlemen in Washington have this matter in charge. I move the adoption of these resolutions.

The motion was duly seconded.

Mr. George E. Price: (President pro tem.) Gentlemen of the Association you have heard the resolution. It is moved and seconded that the resolution as read be adopted. Are you ready for the question?

Mr. Taylor Vinson: I would like to inquire if any gentleman present knows the purport of these treaties.

Mr. W. W. Brannon: I desire to say, for the benefit of the Association, that I brought with me some correspondence between myself as President of the Association and the gentlemen having the matter in charge at Washington. I need not go into a detailed explanation, but will say they sent me copies of the treaties like those which are being presented for consideration before the Senate. This one that I have here is the Anglo-French Arbitration Treaty of 1903.

Mr. Taylor Vinson: I did not want to ask it to be read. All I wanted to know was if some gentlemen here knew enough about the treaty to state that it was all right.

Mr. Ira E. Robinson: If the gentleman will pardon me, I will say, that I understand these treaties have the approval of John Hay, Secretary of State.

Mr. George E. Price: (President pro tem.) Is the gentlemen satisfied with the fact that it is approved by John Hay, Secretary of State?

Mr. Taylor Vinson: I think that is good enough.

The motion to adopt the resolution was put by the chair and carried.

(Mr. W. W. Brannon resumes the chair.)

Mr. W. P. Willey: If it is in order I will make the report of the Special Committee, appointed to report to-day, I believe. This is on the proposition submitted by Judge Jacobs yesterday. (See ante pg—) I believe the proposition ought to be read again. Probably a good many were not here. The report of the committee is endorsed on the back of that proposition.

The Secretary here read the report of the Special Committee, as follows:

"The Special Committee to which was referred the within proposition respectfully report that they are of opinion that any scheme by which the bar of the State can be brought into closer touch with the Law Department of the State University and which shall establish more intimate relations between the members of each, will be for the advantage of the legal profession in the State; and believing that such will be the operation and effect of this proposition the Committee

heartily recommends its adoption.

(Signed) W. P. WILLEY,
HARVEY W. HARMER,
IRA E. ROBINSON.

President Brannon: What shall be done with the report of the committee, gentlemen?

Mr. Harvey F. Smith: I move that it be accepted and embodied in the reports of the Association.

Mr. Wesley Mollohan: Do you move its adoption?

Mr. Harvey F. Smith: Yes, sir.

President Brannon: The motion is to adopt the report of the committee just read. Are you ready for the question?

Mr. George E. Price: Mr. President, who is it that runs the University?

Mr. Wesley Mollohan: The regents.

A Voice: The Board of Regents.

President Brannon: A gentleman over here says it is the Board of Regents.

Mr. Ira E. Robinson: This resolution expressly says with "consent of the board of regents." The original resolution introduced by Judge Jacobs contemplates that this scheme be recommended, provided the regents will permit it to be carried out.

Mr. George E. Price: It seems to me, Mr. President, that we are taking a pretty advanced step with reference to going to the University and thrusting ourselves in there without an invitation and perhaps it will be contrary to some policy that they may adopt. It might put the regents in rather an unfortunate position, provided they do not want us to go there and deliver lectures. And it rather looks to me as though the movement ought to come from the other end. The University, of course, is governed by the board of regents. They have their schemes for conducting that institution and they might not find it convenient to adopt that scheme contained in this proposition to have some lawyers go there twice a month and deliver lectures. We do not know about that. Then again they might be willing even for us to go there and give our crude notions about the law and some of our very wise notions about the law to students under their care. I do not know how they feel about that and I hesitate, Mr. President, to support that resolution.

Mr. L. J. Williams: As I understand the purport of this resolution it is simply an expression of our willingness to go to the University and lecture to the law class, and pay for the privilege of doing so, provided, however, we are invited by the faculty or board of regents, so it does not commit them to do anything, as I understand it.

Col. Robert White: I believe that the Bar Association has been organized in this State about twenty years and I have for the first time to hear any intimation from the board of regents of the Universi-

ty that they wanted this Association in any way to suggest to them what they ought to do. I have never heard that any member of this Bar Association has ever, within that twenty years, been invited by the board of regents to take any part, as lecturer or otherwise, in their affairs, and I think if they want us they can ask us, or if they want any one of us they can ask us to go to the University and deliver a lecture for them; but really it looks to me like a piece of impudence for us to thrust ourselves upon them in this way.

Mr. John P. Arbenz: I do not take the view expressed by Colonel White because I feel this way about it: though no advances have been made by the board of regents, it should not stand in the way of this Association indicating a willingness to aid in this good work. I believe the younger lawyers of the State, especially those who have attended the University, are in favor of this, because it will give the law students some variation from their regular routine. As for the older members of the Bar who are arguing against it, I cannot well understand the motives that actuate them or for what reason they oppose it when they are so well able, upon an opportunity being afforded them, to go there and lecture. We younger members of course will never be expected nor called upon to deliver ourselves on any such an occasion as that, but some of the older members may be called upon and ought not to oppose a thing that is for the good of the whole bar of the State.

Judge T. P. Jacobs: Mr. President: I desire to submit just a remark or two on this matter. It is not a question whether this Association has been invited by the board of regents to enter upon any such scheme as is contemplated. My observation has been that during the last quarter of a century the board of regents has been forced to do some things, by force of public opinion, in the interest of that University.

Now, we are not wholly without an invitation in this respect. This matter, as is the idea suggested in the resolution offered yesterday and referred to a committee and reported upon this morning, is an idea that has been uppermost in the minds of a number of our citizens for several years. The suggestion has come to me repeatedly in that time, and finally came in the concrete form presented in this resolution by friends of the University—some of them young men who have received their legal education there, and in some instances by young men who are now, as I understand it, receiving their education there. The idea embodied in the resolution is no reflection upon the work of the law faculty, whatever. They are doing good, honest, earnest work. But it is for the purpose of bringing the younger lawyers to an appreciation of their legal status and in closer touch with the profession of the State, and to keep expanding there and giving them a front view of the best material in the bar. So while there has been no formal action, and you might say no action at all taken by the board of regents, I feel very well satisfied they will be perfectly will-

ing to acquiesce and give their consent. It seems to me, therefore, if we exhibit a willingness to put ourselves in line with the progressive idea that is advanced by the young men of the State and by those who have left the law school qualified to enter upon the practice of the law it will conform to their ideas. We will have done nothing to derogate from our own dignity and nothing that would appear presumptuous or impudent towards the University law factulty or regents. I am satisfied the sentimen is in favor of this proposition and in some universities the same ideas and practice prevails. Col. White suggested that no such thing has occurred heretofore. If I am correctly informed there have, at intervals, been addresses delivered at the University by members of this profession; under no regular system, whatever, but on occasions such things have been done, and I think there are some present to-day who have done such things.

Mr. Malcolm Jackson: I am heartily in accord with the remarks made by Mr. Price and Colonel White. To take this action on the part of the Association is entirely out of place. I do not think this Association, as such, should in any way attempt to control that law school at Morgantown. Certainly the initiative ought to be taken either by the board of regents or the law faculty, and they ought to do it unincumbered by anything like a demand of this kind from this Association. Unless a course of lectures of that kind was arranged carefully and carried out with some definite end in view, I see nothing to be gained either by the students or the bar. If it is done by the action of the Bar Association, as such, you will find, and the board of regents will find, that they have got to consult with members of the Association and have this thing distributed around and call first on one person and then on another. I do not see why we should be called upon to take the initiative in this matter. There are lawyers on the board of regents and they certainly have in mind everything pertaining to the care of the University and do what they think is desirable for the students who are there. The law faculty is a learned body of men and knows if there is a demand for this kind of a change. If it commends itself either to the law faculty or board of regents of the University they certainly are the best judges of how to carry it out and I do not think we ought to force it upon them as a Bar Association. In fact, I can see how it would be right embarrassing to our regents to have a resolution of this kind presented to them by this Association and be called upon to take some action and say whether they approve or disapprove of it.

I am thoroughly in sympathy with everything pertaining to the law course at the University and bringing the bar in closer relationship to this body and its membership, but I do think that this is illtimed. We do not want to take this delicate position. It is a bad thing to break in on the machinery that governs any of the courses at the University.

Mr. Wesley Mollohan: I recognize that there is some force in

what has been said by Mr. Price, Colonel White and Mr. Jackson, but I think the idea, if carried out in a proper way, would be of advantage to the law school. I do not think it could harm it. It occurs to me that a request for action by the Bar Association in a matter of that kind ought to come first from the regents or the law faculty, or both, in order to give them time to act in the matter. I therefore move that the report be laid on the table for consideration at the next meeting of this Association. That will give the regents and the law faculty time to act and inform us of their action if they desire anything done upon this line. I have no doubt if they would inform the Association that they desire this thing, that the Association would approve of the proposition. It occurs to me that it would be best to come from them first.

Mr. W. P. Willey: The adoption or rejection of this report seems to hinge on the question as to which ought to take the initiative in this matter—whether it should first come from the University or the Bar Association. Now, I understand that this proposition is virtually a proposition coming from the University. Judge Jacobs is a direct representative of the University—a regent of the University—and he has from him as a regent; and I believe that this properly represents the endeavored in this proposition to express a sentiment as coming sentiment that prevails in the law department, and I believe it will prevail, without any urging or any discussion in the board of regents when it is presented.

I have had for many years—quite a number of years—a conviction that it would be very profitable and very beneficial to the profession of the State and to the law department of the State University, if the older members of the bar of the State were brought into closer touch with the law department by visiting it occasionally. The young men there like to see a man with the smell of battle on his garments, that comes from the practical work of the profession; they like to size him up. In some instances I know—in the city of Washington, for instance—the members of the Supreme Court of the United States are engaged to lecture in one or two of the law schools of that city, simply from the fact not that they are teachers or that they succeed so well in teaching, as that the young men like to see those men who have acquired prominence in their profession. They like to come in contact with them and measure them as men and as practitioners. I think it would be a great benefit—a great gratification—to the young men of the law department of the University—and there are over a hundred of them there all the time studying the profession—if they could become acquainted in that way by meeting the practical men of the profession throughout the State. It would be a pleasure to them to meet them and hear them talk and to become acquainted with them personally. Now, if there is any hesitancy on the part of the Bar Association to adopt this proposition on the question of courtesy alone, I do not think we need hesitate; but if that is still in the

minds of the members of the Association, I would like if Brother Mollohan would modify his motion so as to make this matter more expeditious and the culmination of it more expeditious by providing that it may be committed to the Executive Council with power to act. They can consult the board of regents or the board can consult them in the interim of the meetings of the Association, and the matter can be put into practical operation if found desirable.

Mr. Wesley Mollohan: I will agree to change the motion in that respect.

President Brannon: You accept that amendment?

Mr. Wesley Mollohan: Yes, sir.

Mr. George E. Price: I am still not convinced that the scheme is a good one. I do not believe that a young man can learn law properly without beginning at the bottom and following it systematically in its development until he is fitted to become a member of the bar. I doubt whether it is the wisest and best thing to have monthly lectures on odd topics of the law selected by the lecturer without reference to the condition of the course that a class may be then engaged in studying, delivered to a promiscuous body of students engaged in the study of the law. I doubt, for instance, whether a young man of the first year who ought to be reading the fundamental principles of Blackstone (which I believe they teach in the University and of which I highly approve)—whether some discussion upon the doctrine of stare decisis, or international arbitration, or the tax laws of the State of West Virginia, or some of those abstract and difficult subjects that engage our attention constantly, would be of any special benefit to them; and if I were a member of the board of regents it seems to me I would hesitate a good while before I would have that sort of diversion for the minds of students engaged in going along a certain line of study, introduced in the institution. I believe you had better let them plod along, and keep plodding, and learn it from the start, dry and hard as it is, and find out that it is dry and hard, and that there is no royal road to fame in the law. I believe you had better do that, sir, than to have members of the bar going there and delivering odd, disconnected lectures having no special reference to the course that may be under study at the time. Now, it strikes me more that way, sir. At the same time, I recognize that it would not be improper occasionally during the year—at the beginning of the different terms, if you choose, or occasionally—to have some prominent member of the bar of West Virginia invited there to deliver a lecture before the law class. I think that would not be improper, and I have no doubt that members of the profession would be glad to do it, but I am inclined to think that is as far as it ought to go.

Mr. John P. Arbenz: I would like to ask the gentleman a question or two: Do you believe any of the students at the University would not have been benefitted, or rather, would not be benefitted, by listening to a discussion such as we heard from our President yesterday on

"Stare decisis," or such a discussion as we had the good fortune to listen to last evening on "International Arbitration." Do you believe they are not competent to appreciate such discussions as those and to receive any benefit from them?

Mr. George E. Price: I tell you, Mr. President, I have a boy out there now and I would a great deal rather that boy would study Blackstone and the fundamental principles, and gradually develop, than to have too many things that he is not engaged in forced upon his attention and time. He might understand the doctrine of stare decisis but perhaps he has not reached that yet. I would doubt very much the wisdom of his taking up that subject.

I think it is the wisest to let the law faculty determine what course of study shall be adhered to by the students, and not let any member of the bar go there and lecture on any subject he may think proper at any stage of the proceedings there.

Mr. John P. Arbenz: Doesn't the resolution provide that the matter is to be left entirely to the discretion of the board of regents?

Mr. George E. Price: I think it provides that the lecturer is to select his own subject.

Mr. Ira E. Robinson: I move that the pending motion be amended by providing that the report be referred to the President and Executive Council with power to act in the premises and to take it up with the board of regents and put it in force or reject it, whichever they may see fit to do. I do not believe we are gaining much by this discussion. I presume every man—Mr. Price himself—favors the scheme provided it can be made a successful one and I think we can solve the matter by referring it to the Executive Council and President of the Association, who is right on the ground.

Secretary Hubbard: That is the same as Mr. Willey's motion.

Mr. Ira E. Robinson: I did not know that.

Secretary Hubbard: I move the previous question on Mr. Willey's motion.

Mr. S. S. Green: I wish to make a motion as a substitute: I move that this whole matter be referred to the President and Executive Council to consult with the board of regents of the University and see if they can agree upon a plan for carrying out the idea, and that they report to this body at its next meeting for final action and let the Association reserve the right to act until then.

Mr. W. P. Willey: That is the motion that has already been made.

Mr. S. S. Green: As I understood the motion, it was this: that the Executive Council had full power to act and put this thing in operation with the consent of the board of regents. My motion is that the Executive Council report to this body at its next meeting.

Mr. Malcolm Jackson: If the pending motion as well as the amendment is that this Bar Association is to take the initiative, I hope

it will be defeated. The more I hear this scheme discussed the less I like it. I never had the pleasure of being a law student at the University of West Virginia but I was at the University of Virginia, and looking back over the time that I was occupied there, I cannot conceive of a greater mistake than turning the lawyers of the State loose upon our law school to take up and discuss any subject they might choose. Above all things I am opposed to this Bar Association attempting to break into the control, management and direction of the law course at the University without an invitation or request of any kind coming in a formal way. I therefore move that this report be laid on the table.

Which motion was put by the Chair and prevailed.

Mr. George W. McClintic: I move that we take a recess until 2:30; it is almost 1 o'clock now.

Mr. Nelson C. Hubbard: I would like to move that the report of the action taken by the circuit court judges be made the special order of business as soon as we reassemble.

President Brannon: Gentlemen: the motion is that the hour for the receipt of the report of the circuit judges be fixed for 3 o'clock, did you say?

Mr. Nelson C. Hubbard: No, sir; my motion is that it be made the special order of business as soon as we reassemble.

The motion was put by the Chair and carried.

SECOND DAY; AFTERNOON SESSION.

The Association reassembled at 2:30 o'clock p. m.

President Brannon: Next in order is the report of the circuit judges—at least that was set for the opening of the Association—but Judge Mason is not here. I believe the next thing in regular order is the report of the Committee on Grievances, but Judge Jacobs is not here. We will not be confined strictly to the order as prescribed on the programme. Why not receive the report of the Committee on Legal Biography? Colonel White is chairman of the committee and I understand he is ready to report.

Colonel Robert White: Mr. President: I do not know, sir, that any other members of the committee of which I am chairman are present. I have, of course, written to them. I am prepared to make the report which I hold in my hand and which I will now read:

Report Of the Committee On Legal Biography.

(See Appendix III.)

President Brannon: What shall be done with the report of the committee, gentlemen?

Mr. Wesley Mollohan: I move that the report be received and filed.

The motion was put by the Chair and carried.

President Brannon: Next in order, according to our appointment before recess is the report from the circuit judges to be presented by Judge John W. Mason of Fairmont.

Judge John W. Mason: Gentlemen: At the last session of the Bar Association there was a resolution, I think in the form of a request, that the circuit judges should meet and formulate a system of rules applicable to all the courts of the State so far as practicable. Eleven of the circuit judges, I believe, have been present at this meeting of the Association and they have authorized me to make the following report, or, rather, to report to the Association the rules that they recommend to be spread upon the record, I suppose:

Uniform Rules for the Circuit Courts Of the State.

The Circuit Judges in attendance upon the Bar Association at the present session, having met and considered uniform rules for the Circuits of the State, recommend the adoption by the various courts of the State, of the following Rules:

Rule I.

When the Judge enters the court room for the purpose of opening court, the sheriff shall command silence, and thereupon, all persons in the room shall be seated and observe order. As soon as the Judge shall indicate to the sheriff that he desires that court shall be opened, the sheriff shall require all persons in the room to arise and remain standing, while the sheriff, in a distinct and audible voice, makes the following proclamation:

"Oyez, Oyez, Oyez! Silence is commanded on pain of fine and imprisonment while the Honorable Judge of the Circuit Court of———County is sitting. All persons who have motions to make, pleas to file or suits to prosecute, will come forward and they shall be heard. God save the State and this Honorable Court!"

The Judge shall remain standing while the sheriff is making the proclamation.

Rule II.

The Clerk is responsible for all papers filed in his office. Papers in law causes are not to be given out under any circumstances, except for the purpose of preparing bills of exceptions, when such papers may be withdrawn for a reasonable time, upon a receipt being left by the counsel desiring them, in a book kept for that purpose. In a pending chancery cause the papers may be taken from his custody, at the discretion of the clerk, and retained for a reasonable time, upon a receipt being left, as above provided, but in all cases the Clerk shall be held responsible to the Court for such papers.

Rule III.

The Clerk will not be required to file any paper in a cause, unless it is endorsed so as to show its character and the title of the cause.

And all papers belonging to an action or suit, whether in the hands of the Clerk or counsel, shall be kept together and in the paper prepared by the Clerk for that purpose.

Rule IV.

Counsel engaged in causes set for a given day are expected to be present at the calling of the docket at the beginning of that day's session. The absence of counsel without good cause shown, shall not be ground for a continuance or postponement, unless it be in the trial of a cause begun upon a previous day; and, in any event, if two or more counsel have been retained by a party, the trial will proceed if one of them be present.

Rule V.

Where a declaration or bill is amended, as of right or upon leave, the amendment will be made by filing a second declaration or bill, and not by striking from or interlining the original, except by leave of court. And all amendments shall be made in such manner as to show the new parts.

Rule VI.

The verification of pleadings shall not be waived.

Rule VII.

All private agreements or consent arrangements between counsel respecting any proceedings in a cause, must be reduced to writing and signed by the counsel, or entered in the order book. All consent decrees, judgments and orders, shall be signed by counsel before entered.

Rule VIII.

A notice to take depositions or state an account on a day of a regular term on which counsel is actually engaged in trial of a cause in this court, would not be deemed reasonable notice. And, should the name of any witness, who has been examined, not appear in the notice attached to the deposition, the omission will be held good ground for exception, unless the party excepting, or his attorney, appear to have attended the taking of the deposition of that witness.

Rule IX.

Notice in writing to the adverse party is required of the intention to apply for an injunction, or for an extraordinary legal writ, or for the appointment of a receiver, or for an appeal from justice, or for the payment of money under section 9 of chapter 64 of the Code. This rule will be waived only in case good cause is shown against its enforcement.

Rule X.

In all pleadings the christian name of all parties shall be given, and in no case shall the initial of the name be used, unless there be filed with such pleading, a certificate, stating that the pleader has

made an effort to ascertain the full name of the parties and has not been able to do so.

Rule XI.

A party moving a continuance of a chancery cause, will be held to the same showing of good cause as is required in other cases.

President Brannon: What shall be done with the report, gentlemen?

Mr .W. P. Hubbard: I do not suppose there is very much we can do with that report that would be effective. I move that it be received and the thanks of the Association extended to the judges for their courtesy in furnishing us with this copy of the rules.

After quite a lengthy discussion of the rules proposed the motion was put by the Chair and carried.

Mr. W. G. Mathews: If I may do so without interrupting the order of business, and of course I do not just know what that order is I want to know what has become of the report of the Committee on Judicial Administration and Legal Reform which I understood on yesterday was made the special order of business— the further discussion of it—at 11 o'clock this morning. I move that we now take up that report.

The motion was put by the Chair and carried.

President Brannon: Is the Committee ready to report?

Mr. B. M. Ambler: The committee has already filed its report. I apprehend that the object of the gentleman in calling it up is that the interesting discussion that was commenced on the subject on yesterday may be renewed. It is already before the house.

Mr. W. P. Willey: There was a committee appointed to formulate a report.

Mr. Ira E. Robinson: The motion of Mr. Showalter was pending at the time the special order was made. I do not just understand the extent of the motion, but there is where it stopped and it comes up on that now.

Mr. Ira E. Robinson: The matter was made a special order with the motion of Mr. Showalter pending; therefore, we would have to begin on his motion.

Mr. L. J. Williams: Mr. Showalter is present and I wish he would recite his motion of yesterday evening.

Mr. E. M. Showalter: I do not recall the motion now. My impression is that the hour having passed for which it was made a special order, it will have to go over until to-morrow.

Mr. W. G. Mathews: I have no desire of bringing it before the Association unless the members desire to discuss it. On yesterday it was brought up in various phases and a discussion was going on in which I was considerably interested at the time and I was anxious to hear a further discussion of it. I was not taking part in it myself.

The matter was evidently overlooked this morning and I simply asked what had become of it.

Mr. L. J. Williams: The Association has shown by its vote, taken on the subject, its willingness to resume that subject now. It does seem to me this is one of the important matters that has been called to the attention of the Association—that is, changing the law in regard to chancery practice and in regard to the taking of depositions. A motion was made on yesterday evening that this question be referred to a committee of gentlemen, whose names were embodied in the resolution, for the purpose of preparing such a bill or bills as they might deem proper for submission to the coming legislature for action on the subject. I believe the gentleman who put that motion afterwards agreed to amend it at the suggestion of some member of the Association by leaving out the names of the committee; and my recollection is that the motion now pending before the house is that the Chair appoint a committee of three, with instructions to draft a bill or bills and to recommend to the legislature such action on the subject as will bring about such reform in our laws concerning our chancery practice as will give a judge the right to sit and hear oral testimony in chancery cases in lieu of our present bunglesome method of taking depositions throughout the country. I think I understand that motion and I would like very much to see that resolution adopted by the Association and let the legislature take action on the subject. This is a matter about which we are certainly all concerned. We have all had more or less practice in that regard. Generally about the first of a young lawyer's practice is in taking depositions and we know how difficult it is to get proof of this sort and weigh it. It was also shown yesterday in the discussion of the subject that a judge could hear evidence orally and understand it and weigh it better, in the same length of time that would necessarily be employed by him in reading depositions after they had been taken. The only difference between the old method and the one proposed is that under the old you have only to take depositions and the court has to weigh them and pass upon their merits, whereas, under the proposed law the judge will both hear and determine at the same time. Evidence given orally would be taken down by a stenographer and preserved in the record together with exceptions to improper testimony allowed during the trial; and parties litigant would have the same rights to an appeal reserved to them as they now have in the taking of depositions before a notary public, or a justice of the peace.

President Brannon: Are there any further remarks on the subject?

Judge T. P. Jacobs: I want to inquire whether the adoption of the report of the committee extends to a recommendation of that report? The matter was lengthily discussed yesterday as to the proposed change in the time of taking evidence in the chancery causes. Now, I am conservative enough to want to consider that matter very consid-

erably before I would vote in favor of a change so sweeping in its character. I do not find any general demand for any such change, and in considering whether we will make such changes as that, we must take into consideration further the places and circumstances. Now, what would do very well for a populous community or city where they have easy lines of communication—where every man has a telephone in his house and where courts may sit for an unlimited number of days, and where cases can be set and re-set without very much difficulty and without very much expense in keeping witnesses on hand—that might work very well; but you may take a county like my own, for instance, where witnesses have to travel all the way from five to fifty miles and where the time of our courts is limited; where a court very frequently ends without getting through with the ordinary civil list, I cannot see any way for taking up the time of the court with the taking of depositions, or, in other words, with the hearing of evidence at the bar of the court, in chancery causes, nor, really, does it seem practical or convenient in many cases.

Mr. Wesley Mollohan: Does not Mr. Williams' motion leave that with the court?

Judge T. P. Jacobs: I am not aware of it if it does.

Mr. Wesley Mollohan: As I heard it stated I believe it does.

Judge T. P. Jacobs: At any rate before the Association should commit itself to such a sweeping change, it seems to me that a bill should be presented, if we are going to make any recommendation to the legislature in the nature of a bill, so that we may know what we are voting on. I do not say in a pronounced way that I am for or against it, but I would like to know before we endorse it what it is.

Mr. E. M. Showalter: Mr. President: On yesterday when I made the motion for the appointment of a special committee it occurred to me that we were ready to take decisive action in this matter. Since that time there have been some arguments adverse to the proposition and some objections presented by some of the judges for whom I have great respect. I would be compelled to yield to their wishes even if I did not do so voluntarily, and possibly that motion as put is extreme, and if the gentleman who seconded the motion will agree, I propose now to amend the motion to re-commit the proposition to the Committee on Judicial Administration and Legal Reform for a detailed report at the next annual session, with draft of a bill or bills.

Mr. Wesley Mollohan: I second that motion, Mr. President.

President Brannon: Are there any remarks on the motion? It is moved and seconded that the whole subject be recommitted to the committee having the matter in charge to report at the next annual session of the Association with such draft of a bill or bills as they see proper.

The motion being put by the Chair was carried.

President Brannon: The report of the Committee on Grievances is next in order, and I wish Mr. Vandervort would take the chair.

Mr. Vandervort (in the chair): Gentlemen, the matter next in order is the report of the Committee on Grievances. Judge Jacobs, I believe, will submit that report.

Judge T. P. Jacobs: Mr. President and Gentlemen: It was not possible to get a full meeting of the committee. One reason was owing to the great distance between the residences of the different members of the committee.

Mr. George E. Price: Louder! Louder! We can't hear you over here.

Judge T. P. Jacobs: Wait until I get steam up and you will hear me. And then, again, owing to a slight inadvertence or mistake of my own——

A Voice: Louder!

Judge T. P. Jacobs: The committee will courteously suggest that if the Association will keep order, no cries of "louder" will be necessary. Though I haven't the power, just now, of the circuit court, to keep order, the President has. I shall now read the

Report Of the Committee On Grievances.

To the President and Members of the West Virginia Bar Association.

The Committee on Grievances begs leave to report as follows:

At the last session Mr. W. W. Brannon in a written communication complained of an opinion of the Supreme Court pronounced by Judge Dent in the case of M. S. Holt vs. John King, 54 W. Va. page 441 in which he says the "Judge took occasion to reflect most seriously upon my honesty and integrity." See page 61 of the proceedings.

Hon. John J. Davis an able and learned member thereupon introduced a resolution which prevailed, instructing this committee "carefully to examine and investigate the whole matter contained in" said communication of W. W. Brannon and "to report all the facts and circumstances in said communication asked, together with such recommendation as to it may seem proper in the premises."

Article 13 of the Constitution defines the powers and duties of this Committee; and the question suggested by Mr. George B. Caldwell on pages 62 and 63 as to the duties of the Committee and the powers of the Association in the premises are matters of the highest interest and involve questions of great propriety.

They involve the review of the decision of the Supreme Court in a very interesting case, and not only so, they involve the very language of the Court in the opinion of one of its judges. The Committee doubts not only the propriety but also the power of the Association to do any such thing, nevertheless the Association having commanded, we obey.

The Committee has before it the printed Record, the briefs and various opinions of the Court in the above named case and finds in substance as follows:

M. S. Holt plaintiff in that case held a lien on the land in controversy for $1700.00, Brannon held a subsequent lien. The land—100 acres—had been sold at delinquent sale and purchased by John King. The value of the land was not sufficient to pay Holt's lien. Brannon as lienor desired to redeem the land; Holt informed King he wanted to purchase of him if legal, and if not he wanted to redeem the land. King it seems, informed Holt that Brannon wanted to or was going to redeem the land; King then went to Brannon to let him redeem the land. At that time and only a few days before the expiration of the redemption period King made a formal assignment of his purchase to Brannon.

It is said that no one knew of this assignment, but there does not appear to be any injunction of secrecy, though Holt did not know of the assignment for some time afterwards.

Brannon says he had held up these people quite a while, meaning he had advanced money and carried the land owner along for some time and it had become quite a burden to him, and if they (the owners) redeemed the land he would be out his money, but that if he purchased it they would either have to pay him back or he would hold the land.

We do not agree with the Court that this shows Brannon's intention at the time of preventing a redemption, but we do think it was Brannon's intention to put himself in a position, if possible, where if any one insisted on redeeming he could compel them to make him whole.

Holt brought suit to prevent Brannon from obtaining a tax deed, on hearing, the lower Court dismissed the bill; and Holt appealed.

The Supreme Court in an opinion not published amended and affirmed the decree of dismissal, holding that Holt being a mere lien creditor could not maintain the bill solely on that ground, and independently of any proceeding to enforce his lien. The decree was amended so as to preserve to Holt the right to bring or prosecute any suit deemed necessary to enforce his vendors lien against the land in controversy, and in connection therewith to attack the tax sale.

In that opinion, a copy of which the Committee has, it seems to be held that Brannon's actions in taking an assignment of the tax sale amounted to a mere statutory redemption of the land from delinquent sale, and that Brannon having paid the money necessary to redeem, might take title in his own name to secure repayment thereof, but he should be held a trustee for the benefit of the land owner and other lienors who might otherwise be defrauded of their rights and he obtain by reason of his statutory privilege of redemption, an unconscionable advantage over them.

The Committee agrees with this statement of the legal aspect of

the matter at this juncture but why speak of an "unconscionable advantage" after holding that Brannon "might take the legal title in his own name to secure repayment of the money he paid to redeem?" And why does the opinion discuss Brannon's condition if he had not the right to redeem, in as much as the Court finds that he was a creditor and had the right to redeem?

The Court and the Committee both find Brannon had the right to redeem. But Brannon went one step further, he took an assignment of the tax purchase. This was his tabula in naufragio, his plank in the shipwreck, and he had the right to seize upon it.

Brannon was a lien creditor; he was also a creditor at large. We think with the Court that by professing to redeem and by taking the assignment of the tax purchase, he became trustee for the owner and other creditors, who could avail themselves of the benefits of the redemption by doing equity, that is by reimbursing Brannon; but if they saw fit not to redeem but to waive such right, Brannon could still hold the land and thus in a measure make himself whole for expenditures on behalf of the former owner.

If Brannon first thought to redeem and then in addition concluded to take the assignment he would be in the position of a party whose duty it was to redeem.

The situation of Holt the plaintiff was one requiring no great tenderness of treatment. It looked like he was maneuvering to ride into position on Brannon's neck. He knew the land was delinquent and it lacked but a few days of the expiration of the redemption period. He told King he was going to redeem, but made no effort to do so. After Brannon purchased or redeemed, Holt could get the benefit of the redemption by bearing his share of the burden. This was equity and was right.

In the first opinion there is little in the way of stricture or criticism which any one could object to, which goes to show that it was possible to decide the case, do substantial justice, and yet do so in a way not to grate on any one's ears.

It left Dr. Holt free to pursue his correct remedy, saved his right and convicted no one of mala fides. Nor do we think there was any mala fides in the case.

Holt did not pursue his proper remedy; he evinced a purpose to get the benefit of Brannon's conduct without bearing any of his burdens. It certainly seems that Brannon had the right to protect himself by his purchase to the extent of compelling other creditors to help bear his burdens; and if they would not he ought to be allowed to hold his legal advantage to that extent.

The case was reheard and the final opinion is found in 54 W. Va., 441. In this opinion the Court has no difficulty in holding the suit properly brought.

In the first opinion the Court thought Holt could not maintain the

suit except as ancillary to a suit to enforce his lien. In the final opinion the contrary is held.

It is to some of the language in this opinion that Mr .Brannon objects.

The Committee will not criticise any of the language of Judge Dent. A proper respect for the highest State Court forbids.

A lawyer who becomes a party to litigation is in the same condition and situation as any other party: entitled to no more and no less.

The Committee however does regret that the Judge used certain of the language found in the opinion.

If any one committed a willful and deliberate fraud upon Holt it was King. We do not think Mr. Brannon was guilty of corrupt mala fides. The worst it seems that can be said of him is that having determined to redeem he converted the redemption into a purchase, which the Court says in its first opinion made him trustee for owner and creditors, and it arrived at this conclusion without convicting of mala fides on the part of Brannon.

We think Brannon took his position to compel a sharing of the burdens if the parties did redeem and if not he would have the benefit of his purchase. If Holt had proceeded to redeem and not to endeavor to oust Brannon from his position of assignee of purchaser, which he had the right to assume for one purpose, and then Brannon had insisted on his purchase as absolute for all purposes, then he might have been convicted of corrupt fraud.

Mr. Brannon objects to a statement made by Judge Dent on the last page of the opinion. It says "On the solicitation of Mr. Brannon through his counsel, this opinion has been revised a third time."

Mr. Brannon says his counsel endeavored to have the decision modified or changed in the ordinary way by petition for rehearing.

Judge Dent further says "He (Brannon) disclaims all disposition to wrongfully deprive Mr. Holt of his property, and that if he is guilty of any wrong in the matter, which he in no wise admits, it is a mistake as to his legal rights. He is entitled to the full benefit of such disclaimer."

This takes the rough edge off any language in the opinion. We do not think Mr. Brannon guilty of corrupt fraud. If he took a position on the tax purchase in advance of his first thought it was largely due to Holt's effort to defeat his position as redemptor without bearing any of his burdens; and the court could have as readily decided the matter in the last opinion as it did in the first without the use of strong language.

We have no idea Judge Dent meant to do Mr. Brannon any injustice, and we have no thought that Mr. Brannon intended or was guilty of any corrupt practices. We therefore recommend the following:

Resolved, that this Association regards Mr. W. W. Brannon a member of the Association, a citizen of high standing and worth, and

a lawyer of integrity and ability, and worthy of the public confidence.

Respectfully submitted,

THOS. P. JACOBS,
Chairman of the Committee.

Dec. 29th, 1904.

Mr. Vandervort (in the chair): What shall be done with the report of the Committee on Grievances?

Gen. C. C. Watts: I move that the report be received and the resolution adopted.

The motion being duly seconded was put by the Chair and carried.

Judge T. P. Jacobs: If it is not out of order there is another report of one of the standing committees that I would like to make and get it off my hands.

President Brannon (in the chair): What is it?

Judge T. P. Jacobs: It is the report of the committee on the Torrens System.

President Brannon: With unanimous consent we will take that up now, gentlemen.

Judge T. P. Jacobs: I have tried to persuade one of my associates on the committee to report but he declines. The report which I will read is as follows:

Report Of Committee On Torrens System.

To the President and Members of the West Virginia State Bar Association:

Your special committee on the Torrens Land System appointed in obedience to a Resolution adopted at the last annual meeting of the Association, begs leave to report:

That the committee prepared and published in the Bar for the month of November 1904, a report upon that system; in which it was sought to outline and define its main features; to define the purposes of the system, the method of putting it into operation, together with some data necessary to be known in determining the merits of the system.

Numerous legal difficulties suggested themselves to the committee necessary to be determined in its adoption which the committee saw fit to leave for the consideration and decision of the Association rather than to make any definite suggestion themselves.

The outline as published in the Bar is submitted and made part of this Report, and reference is made thereto for further information.

In further performance of their duties in this behalf, the committee prepared and had published in the Bar for the month of December 1904, a proposed bill for the purpose of putting the System into operation in case the Association should take affirmative action in the

premises.

The committee does not claim perfection nor originality for said bill; indeed it would even now suggest changes before presenting it in final shape for legislative action.

The bill is presented as a sample bill, and a fair type of such laws in states where the System has been adopted and is in force.

The committee has taken a bill, or bills used and adopted elsewhere and made such changes as they thought might suit our system of laws and procedure. They have adopted some wholly original features which seemed in some measure to simplify the system and in such respects make it preferable to the Systems of other states; notably the dispensing with the examiner of Titles; and conferring on the court created the duty of keeping the title adjudicated at each successive transfer by subsequent conveyance. This feature in the opinion of the committee is absolutely necessary to maintain the efficiency of the System, if adopted.

It is here now suggested that if the Association after due consideration shall adopt the System, it ought to settle the main features thereof and then commit the measure to a committee for the purpose of drafting a bill for the purpose as nearly perfect in its inception as under the light of experience and information may be possible.

The committee makes no recommendation, preferring rather to submit the whole matter for the consideration of the Association, than to determine so important a matter itself. The committee is now ready to be interpellated.

December 29th, 1904.

Respectfully submitted,
THOS. P. JACOBS,
W. P. WILLEY.

After considerable discussion of the report, Mr. Ambler moved that the matter be referred back to the committee from which it came with the request to print in full, at the expense of the Association, their report as it appeared in the November and December numbers of "The Bar," with such additional matter as they may think proper, and that they send a copy or several copies to every member of the Association.

Mr. George E. Price: Some one has suggested that the safest thing to do with this whole matter is to adopt it and then add the following amendment at the end of each section: "This section is not to take effect until January 1st, 1909."

Mr. L. J. Williams: I second Mr. Ambler's motion. It would be impossible and useless at this late hour on the last day of our meeting to undertake a discussion of so important a subject as this, and one so sweeping in its effects. We have not had time to consider it, and certainly in the short discussion we have had we have not been able to arrive at a conclusion that any of us would be satisfied with. It is for this reason that I second Mr. Ambler's motion.

Mr. W. P. Willey: I move as an amendment to that motion that three or four members of the Bar Association who are familiar with our land litigation and land laws shall be added to that committee, and that it be instructed to put the bill in such shape as they would approve of, with the view of submitting it to the legislature.

President Brannon: Do you offer that as an amendment to Mr. Ambler's motion?

Mr. W. P. Willey: Yes, sir.

President Brannon: The amendment is to add to the committee—what number do you name?

Mr. W. P. Willey: Three.

Mr. E. M. Showalter: In order that the matter may come up in all its phases, I would offer as a substitute for the motion and the amendment, that the thanks of the Association be extended to the committee for the careful examination they have made of the Torrens System.

Mr. B. M. Ambler: You are out of order. The constitution prohibits recognition of any services.

President Brannon: The constitution prohibits the voting of thanks to any officer or member of the Association for any services performed.

Mr. E. M. Showalter: Under the Chair's ruling I will omit that from my substitute. Then my motion would be this: that the report of the committee be received and lodged in the archives of this Association as a memorial that the Torrens Land System was once considered by the Association.

Mr. B. M. Ambler: That would not be true.

President Brannon: There is no second to that motion. The motion to recommit the whole matter to the committee having the subject in charge. The amendment is that the committee having the subject in charge be increased by the addition of three members to be appointed by the President unless there is something to the contrary.

The motion to amend was put by the Chair and carried.

President Brannon: I will add some gentlemen to the committee presently.

Mr. W. P. Willey: That was simply the amendment that was passed; the original motion has not been put. The motion as amended now is that this committee be instructed to prepare a bill for presentation to the legislature and to print the same and distribute it among the members, and report at the next meeting of the Association.

President Brannon: The motion as amended is that the committee having charge of the matter shall print this bill and furnish each member of the Association with a copy of said printed bill.

The question was put by the Chair and the motion as amended was adopted.

President Brannon: The next order of business is the report of delegates to the annual meeting of the American Bar Association, to be presented by Mr. J. W. Vandervort of Parkersburg.

Mr. W. B. Mathews: I ask unanimous consent to submit a further report from the Committee on Admissions. Mr. A. B. Daley, of Hinton, has applied for membership. He has been duly recommended, has paid the initiation fee and has complied in all other respects with the constitution, and move that Secretary cast the ballot of the Association for Mr. Daley.

The motion was put by the Chair and carried; the Secretary cast the ballot, and Mr. Daley was declared to be duly elected a member of the Association.

President Brannon: The report of delegates to the American Bar Association, by Mr. Vandervort.

Mr. Vandervort submitted the following, which was received:

Report Of Delegates To the American Bar Association.

To the West Virginia State Bar Association:

Until within the last few days I had not expected to be called upon for a report on behalf of the Delegates to the American Bar Association.

The 27th Annual Session of this Association was held in Festival Hall on September 26, 27 and 28, 1904. This hall is the Musical Hall in the Exposition grounds at St. Louis, is extremely large and by its method of construction was ill fitted for the sessions of this body, on account of its acoustic properties. So evident was this at one of the meetings of the World's Congress of Lawyers and Jurists that when Judge Dillon defended the Jury System for the United States he faced the platform and his voice was so inaudible to those in the rear, that we almost felt he had turned his back to the representatives of the American people.

The West Virginia lawyers that I recall who were in attendance at this session of the American Bar Association were, Henry M. Russell, T. P. Jacobs, Wesley Mollohan, Harvey F. Smith, B. M. Ambler, C. D. Merrick, W. H. Wolfe, Jr., W. W. Brannon and Colonel Robert White—there were possibly others whose names I do not now recall.

This was the first session of the Association that I have attended and so I cannot undertake to speak of the session by comparison with former meetings of this body. The Session was somewhat shadowed by the meeting of the Congress of Lawyers and Jurists which immediately followed.

Every courtesy was extended by the World's Fair officials—free admission to the grounds during the Session was appreciated. On Monday evening of the first day's session a reception was given by the Missouri Bar Association at the Missouri State Building. A feature

that made this reception doubly pleasant to myself was the fact that Joseph A. Hawthorne a former classmate of mine, was one of the Commissioners of the Missouri State Building and he and his wife were the real hosts of the evening.

To give an extended and accurate statement of the regular sessions of the Association would perhaps be difficult and hardly in keeping with a simple report on behalf of the delegates, and I am sure others who attended these sessions can in a timely manner supplement what I say.

The paper read or rather the address delivered by J. M. Dickinson of Chicago on "The Alaskan Boundary Case" was the most interesting and instructive I have heard or read upon the merits of this controversy. This was delivered on Monday afternoon.

On Tuesday morning the paper by Hon. Amos M. Thayer, U. S. Ct. Judge for the 8th Circuit on "The Louisiana Purchase—its influence and development under American Rule" was a well prepared paper and gave in pointed language a well defined view of the value to our country and its people of this great purchase.

The subject of admission to the Bar was one considered at some length at this Session and an effort is being made to have in all the states a uniform method of admission. In many of the states their law does not permit a lawyer coming from another state to regularly practice therein until he has practiced a certain number of years in the state from which he comes.

It was especially pleasing to West Virginians that Henry St. George Tucker of Virginia, a worthy son of a noble sire, was selected as the next President of the Association.

On Wednesday evening the banquet given to the American Bar Association and Congress of Lawyers and Jurists by the Universal Exposition, at which there were probably 800 plates, was a most attractive assemblage. Colonel Robert White and I sat next each other and desirous of adding to the sum of our enjoyment I took the liberty of asking the name of my neighbor across the table. His name was Hogg; I then introduced Colonel White and myself. We soon found out it was Governor Hogg of Texas. He is a most superb story teller and a most genial gentleman. At one time his wit was most happy, several gentlemen came up to speak to him and shake him by the hand. He reached around the others to one who was in the rear and who escaped. He remarked to us after they left—"Did you notice my effort to reach that waiter, but I believe he was the best looking man of them all."

I asked him if when abroad he had actually refused to be presented to King Edward the 7th of England. He replied that the newspaper notoriety over this incident was not of his making, but that when he found that to be presented to the King meant for the moment at least, a condition of abasement and servility not becoming an American citizen, he did not propose even for so short a period to abjure his

allegiance to his native land and belittle his manhood, and as he spoke the pride of his American manhood was manifest in every action.

The feature of membership in the American Bar Association that most impressed me was the acquaintance and good fellowship that follows. To the regular attendant I can well believe that the comradeship, the esprit de corps will lighten and brighten life's labors in our profession and lift us into a clearer atmosphere, and for the time at least, separate us from the sordid pursuit of our ambitions. We there mingle with lawyers from all the states and by a comparison of views and methods, find that the time spent in attending these sessions is by no means lost. And now after twenty years, since our own state organization was formed, when we compare the then with the now, we all, I am sure, feel that our labors have not been in vain. It is impossible to give the wanderings and experiences of our delegates, but one incident in connection with our worthy President W. W. Brannon shows when he is away he is true to the profession. While on a boat on the Mississippi ready to take a trip he became weary with waiting for the boat to start. He finally threatened the old colored woman, the cook on the boat, that he would start the machinery himself. The boat finally started and Mr. Brannon said to the cook, "you see mammy I started the machinery all right." "Yes," she replied, "your mouf is about all the shinery you can start."

J. W. VANDERVORT.

President Brannon: Next in order is the report of Delegates to the Universal Congress of Lawyers and Jurists at St. Louis, to be presented by Mr. Russell, of Wheeling, but he is not here.

Secretary Hubbard: He has sent his written report and has asked me to present his apologies to the Association for not being present in person. We all know that no apology is needed to explain the absence of Mr. Russell from a meeting of this Association. I will simply say that he could not be here. I will read the report.

Report Of Delegates to the Universal Congress Of Lawyers and Jurists At St. Louis.

To the State Bar Association of West Virginia:

The undersigned had the honor to be appointed as one of your delegates to the Universal Congress of Lawyers and Jurists which was held at St. Louis during the recent Exposition and has also been asked to present to you a report upon the subject of the Congress.

There were present a number of prominent lawyers and judges from different parts of this country and also a number from other countries. The papers which were read and the discussions which followed were very interesting and instructive. They related for the most part to subjects governing or affecting the relations between the different nations and for that reason were a little out of the usual line

with which the practicing attorneys are familiar and were all the more interesting.

The Congress began its sessions on September 28, 1904, and continued for three days. A number of resolutions were referred to the Committee of Nations and the reports from that Committee were the subjects of much of the discussion which took place. The formally prepared papers were as follows: The first, by John W. Foster of Washington City, was: "The promotion of the settlement of international controversy by resort to the Hague Tribunal of reference to special commissions." The second was the paper of Gustaf Edward Fahlcrantz of Stockholm on: "The principal method of regulating the trial of civil actions with respect to pleading and evidence." Third, a paper of Dr. G. Josephus Jitts of the University of Amsterdam, on: "A review of the four Hague conferences on private international law, the object of the conferences, and the probable results." Fourth, the paper of Sir William Kennedy, Justice of the High Court of England on: "To what extent should judicial action by courts of a foreign nation be recognized?" Fifth, the paper of G. A. Finkelsburg, of Saint Louis on: "The protection which should be accorded to private property on the highways in time of war."

A particularly pleasing feature of the discussions which took place with respect to the papers and the reports of the committee on nations was the manifest and enthusiastic desire upon the part of all those who spoke, that controversies between nations should be adjusted and settled otherwise than by wars.

The proceedings of the Congress were somewhat elaborately described in an article which appeared in a recent number of the Bar and which may be treated and considered as a part of this report. It is therefore deemed unnecessary to repeat details in this report.

Respectfully submitted,

HENRY M. RUSSELL.

Wheeling, W. Va.,
December 27, 1904.

President Brannon: What shall be done with the report, gentlemen?

Mr. B. S. Allison: I move that it be received and filed.

After being duly seconded the motion was put by the Chair and carried.

President Brannon: The next order of business is a paper by A. M. Poundstone of Buckhannon on the subject of "Proceedings at Rules and other Methods of Maturing Cases."

Secretary Hubbard: I got Mr. Poundstone to consent early in the summer to write a paper and heard from him about a week ago to the effect that he would be here and read the paper; but the day before I left home to come down here I got a telegram through the President, stating that Mr. Poundstone would not be here. I at once wired and

asked him to mail his paper to me so that it could be read and a discussion had. On yesterday I received this letter:

Here was read Mr. Poundstone's letter of explanation.

President Brannon: I have had frequent talks with Captain Poundstone and I understood all along during the summer that he was preparing a paper on this line. I was much in hope that he would be here, and understood that he would have the paper ready. In fact a few days ago he told me he had it about completed; but since then I have received a telegram stating that there was some litigation that he had to attend to in Pennsylvania between some railroad company and his wife, and that he would be unable to attend this meeting of the Association. He requested me to so inform the Association, which I take pleasure in doing.

Mr. B. M. Ambler: I offer this resolution on behalf of the many hundreds of Bar Association men here present, with the expectation that the outgoing Secretary will reduce it to typewriting before it goes into the record.

"Resolved: That the Bar Association tenders its acknowledgments and thanks to the Bar of Kanawha county and their many friends in Charleston for appreciated courtesies and considerate provision for the comfort and entertainment of the members present; we thank the officers of the United States Court, and the Committee who decorated this beautiful room for our use. To the press, for its interest in, and its publication of our proceedings, and to the transportation companies, we express our sense of obligation."

President Brannon: What shall be done with the resolution?

Judge J. M. McWhorter: I move that it be adopted.

The motion, after being duly seconded, was put by the Chair and the resolution was adopted.

President Brannon: According to the order of business a resolution will be offered at this point "providing that the Association shall annually select one specific matter of law reform," &c. Is there any resolution on that subject?

Mr. George E. Price: Isn't there a paper to be read here by Mr. W. P. Hubbard to this Association?

President Brannon: We haven't reached that yet. That is "19" and we are on "18."

Mr. George E. Price: Are we going to fritter away time——

Mr. B. M. Ambler: If what I am after is frittering it away let's fritter it away.

Mr. B. M. Ambler: I move that we pass "18."

President Brannon: I understand the executive may arrange a matter of this kind. By common consent we can pass to "19;" but

I have called for the resolution on the subject suggested, if there be any.

Mr. Nelson C. Hubbard: The resolution is here if it is desired to have it read.

Mr. B. M. Ambler: No, no; I move that we transpose No. 18 and No. 19; that is in order. I move that we take up No. 19.

President Brannon: It is moved and seconded that we transpose No. 18 and No. 19. Are there any remarks?

Mr. W. P. Hubbard: I think it would be proper for me to be heard on that motion. I am very much opposed to it, for several reasons. Mr. Ambler cannot now make good the position in which he has put himself by having the Association adopt that which is always the last act of a meeting of the Association—the returning of thanks to everybody. After that is done, according to all the traditions of this Association, nothing else is in order. Now, in the next place, it must be manifest that in the time remaining at the disposal of the Association it would be absolutely impossible for any one to furnish any fit and proper retrospect of all the doings of this Association; and in support of my position as to that motion it may be proper for me to say further that I have been in this connection a good deal perplexed about two things: One is how I came to be asked to furnish this paper and the other is how I came to consent to furnish it. As to the first question I am satisfied it cannot have been because I happened to be present at the organization meeting, nor yet because ten years ago, as President, I felt compelled to address the Association on its then past, present and future; nor even because I am supposed to have gotten where, from what I see, there is so much more that is retrospective than prospective; therefore, I am forced to the conclusion that I was asked to present this paper because every one else had refused to do it, and even if I consented to furnish the paper, that consent was extracted from me on representations as to the verity of which the Association may judge.

It was said that this was the twentieth annual meeting of the Association and that it had reached a point where it would be extremely proper for one who had been with it during that period to make an effort to tell its story; but when I got ready to write my numerous reminiscences of twenty years after, and came to look at the records, I found that the meeting at which this Association was organized was held on the 8th of July, 1886, and if the twentieth anniversary comes this year, we have certainly filled the past years very full of ourselves by holding twenty annual meetings in eighteen years.

In the next place it was represented to me that Captain A. M. Poundstone would be here with a paper about the maturing of causes. Now, papers and discussions about the maturing of causes have constituted about one-half of the past of the Association, and I had the right to believe, from the announcement that was made to me, that they would be brought here for my benefit in attempting to consider

this retrospect. So you see what has happened to me on that score.

In the next place the gentleman to whose efforts, perhaps, more than to those of any other man the existence of this Association is due—General Joseph Sprigg, who may be called with truth the founder and father of the West Virginia Bar Association, (he is charged with it, anyhow, and his somewhat sudden exit from the State shortly after the birth of the Association would indicate, upon his part, some apprehensiveness of paternity)—ought to be present on the twentieth anniversary of the Association. He lives in Cumberland and Senator Price told me he had written him and requested his presence, and that General Sprigg had answered that on account of the growing infirmities of old age he was unable to come to Charleston. Seriously, Mr. President, the Association owes General Sprigg a very considerable debt. He may have been too old to come to Charleston this year and yet next year he may be young enough to come to Fairmont, where the meeting is to be held, as I understand. It seems to me as that date will come nearer the twentieth anniversary of the Association than this, that in view of General Sprigg's early connection with us it would be very proper to have him present, and I trust that Mr. Ambler will accept what I am about to propose as a substitute for his original motion: that the Association through its Secretary invite General Sprigg—who lives at Cumberland and who can likely conveniently come to Fairmont—to attend the next annual meeting, at which time Mr. Ambler no doubt will be glad to take the place assigned me at this meeting and furnish a retrospect, which I am sure he can do better than I can.

Mr. Ambler: I move that Mr. Hubbard be required to read that paper; I see it in his pocket.

Mr. W. P. Hubbard: The paper isn't in my pocket; that is a mistake.

President Brannon: The motion is to transfer No. 19 to the position occupied by No. 18. Are you ready for the question?

The motion was put by the Chair and carried.

President Brannon: Next in order is "A Retrospect" by Mr. Hubbard. I have been highly entertained by Mr. Hubbard's remarks —as much so, perhaps, as I would be by the retrospect. I do not mean by that that the retrospect would not be highly interesting, but he has entertained me by his excuses and witticisms and I am willing, so far as I am concerned, to excuse him from reading a paper if he has any—a fact which is alleged by Mr. Ambler but denied by Mr. Hubbard himself.

Mr. George E. Price: I suppose we shall have to accept Mr. Hubbard's very full explanation whether it is entirely satisfactory or not; so I move you, Mr. President, that Mr. Hubbard be requested to prepare such a paper for the next meeting of this Association at Fair-

mont—a paper giving a retrospective view of the history of this Association.

Mr. W. P. Hubbard: I will be ready for the next meeting.

The motion after being duly seconded was put by the Chair and carried.

Mr. W. P. Hubbard: Now, I move that an invitation be extended by the Association to General Joseph Sprigg to attend the next meeting of the Association and deliver an address before it.

President Brannon: It has been moved and seconded that this Association tender an invitation to General Joseph Sprigg to answer this charge of paternity at its next meeting.

The motion was put by the Chair and carried.

President Brannon: The Secretary will inform General Sprigg of the fact. On motion, now, the Association may take up any miscellaneous business if there is anything under that head.

Secretary Hubbard: Do you desire to take up this resolution that is in the programme?

President Brannon: Yes, sir; I had forgotten that. Now "18" takes the place of "19."

Mr. W. P. Hubbard: I move that the discussion of the retrospect as assigned to Mr. Ambler, be also postponed until we meet next year at Fairmont, and that an invitation be extended to him to give us the benefit of that discussion at that time.

President Brannon: There is a matter already before the house. The Secretary will read the resolution.

Secretary Hubbard: The substance of that resolution will be found on page 2 of the programme and is as follows:

"A resolution will be offered providing that the Association shall annually select one specific matter of law reform to be accomplished by legislation in West Virginia. If such resolution be adopted, the Association will proceed to select the object of its effort at the next session of the legislature, and any subjects proposed may be discussed at length."

Mr. L. J. Williams: Do I understand the effect of that, if adopted, would be to limit us to one subject annually?

Secretary Hubbard: The resolution provides for the selection of one subject at each annual meeting. Of course the resolution may not be reached in a year or two years; so I move that it be referred to the Executive Council to report at the next meeting—I mean, the subject of this resolution.

The motion after being duly seconded was put by the Chair and carried.

Mr. J. W. Vandervort: If there is no further business I move that we now adjourn.

Mr. B. S. Allison: I hope you will withdraw that for a moment.

Mr. J. W. Vandervort: All right.

Mr. B. S. Allison: I desire to make this motion: I think the explanation of the Chairman of this meeting as to why Captain Poundstone is not here is a satisfactory explanation and——

Mr. J. C. McWhorter: If Mr. Allison will pardon me a moment I would like to say that I personally know something of the reason why Captain Poundstone is not here. I am sure if he were here the explanation he would make to this Association would be entirely satisfactory; so I move you, Mr. President, in consideration of these facts that he be requested at the next meeting to read the paper that he was to have read at this meeting. I know that in the meantime he will be able to prepare it.

The motion after being duly seconded was put by the Chair and carried.

Mr. W. E. R. Byrne: In the absence of the chairman of the Committee on Admissions I desire to obtain unanimous consent to propose the name of Mr. Henry B. Davenport for membership in this Association, and move that the Secretary be authorized to cast the vote of the Association for him.

President Brannon: If there is no objection the Secretary will cast the vote of the Association as suggested.

There being no objection the vote of the Association was cast by the Secretary and Mr. Davenport was duly declared elected a member of the Association.

President Brannon: Before adjourning I want to add three names to the committee on the Torrens Land System—Messrs. C. D. Merrick, L. J. Williams and James F. Brown.

On motion of Mr. Vandervort the twentieth annual meeting then adjourned.

APPENDIX.

APPENDIX I

ADDRESS OF THE PRESIDENT

HON. W. W. BRANNON.

THE DOCTRINE OF STARE DECISIS, AS UNDERSTOOD AND MISUNDERSTOOD.

Gentlemen of the Association:

It is an honor indeed, to address so distinguished and representative body as The West Virginia Bar Association, formed as it is, "to advance the science of jurisprudence, to promote reform in the law; to facilitate the administration of justice; to uphold integrity, honor and courtesy in the legal profession; to encourage thorough liberal education, and to cultivate cordial intercourse among the members of the bar." It is not only a distinguished honor to address such body of men, but it is made the duty of the President to deliver an address at the opening of the annual meeting next after his election; and the task is assumed with pleasure, for we are sure that our words will be properly understood by the brethren of the legal profession.

The subject of such an address is naturally important, and it should be chosen with care, for it is but fair to assume that what is said, will be patiently heard and faithfully considered.

The President's address at the last annual meeting was on the subject of "Recent Legislation and Decisions in West Virginia."

In late years this body has given attention to the discussion of "Government by Injunction," "Rent Remedy," "Railway Corporations and the Juries," "The Citizen and Republic," "West Virginia Land Titles," "Regulation of Industries by the National Government" and "Land Transfers, Ancient and Modern," and in a number of these speeches, special reference has been frequently made to the doctrine of stare decisis.

A perusal of the interesting and instructive discourses of the able and distinguished gentlemen of this Association, together with some observation and experience, has naturally led to the selection of the topic, The Doctrine of **Stare Decisis**, as Understood and Misunderstood.

Before entering a discussion of the subject, strictly under the head indicated, it may be well to examine briefly, but with some care, the definition of **law**, for its definition is in direct harmony with the doctrine to which we shall direct attention. In a recent elementary work, by Prof. Wm. P. Fishback, late dean of the Indiana Law School, the author says, that municipal law **prescribed** certain rules of civil conduct; that these rules are (1) for the protection of our persons, (2) for the protection of our property, (3) for the protection of our reputation. He further says that the value of these rules consists in the fact, that they eminate from, and are conferred by, the whole people acting through their legislatures, their courts and their executive officers.

In Bouvier's Law Dictionary, **law** is defined to be "that which is laid down, that which is established, a rule or method of action or order of sequences." Blackstone's definition of **law** is "A rule of civil conduct prescribed by the supreme power in the State, commanding that which is right and prohibiting that which is wrong." In Stephen's Commentaries, **law** is defined to be a rule of civil conduct, prescribed by the supreme power in the State. Anderson's Law Dictionary gives Blackstone's definition of **law**, and cites other authorities to support it. In a note given by Anderson, **law** is defined to be "that which is laid, set, fixed." In Black's Law Dictionary, **law** is said to be "that which is laid down, ordained or established." It is further defined as being a system of principles and rules of human conduct, being the aggregate of those commandments and principles which are either prescribed or recognized by the governing power &c. Law in this sense, according to Black, includes the decisions of courts of justice, as well as acts of the legislature. Black cites a number of code definitions of elementary writers in support of his definition. It will be observed that no true or correct definition of law can be found in which the idea of **prescription** is not an essential element. We understand that to be law, which has been laid down, ordained, established or prescribed. Our Court of Appeals has

frequently said that a certain proposition is settled law, or fixed law, or well established law. In other words, it is understood, as we have always been informed, that law is that which has been prescribed. We are therefore governed by the law as we find it, as it has been prescribed, and do not undertake to determine whether that which is prescribed as the law is right in principle, or sound in doctrine, or whether it has been declared to be the law by a misunderstanding or a misapplication of certain principles, but on the contrary, we regard that as the law, which we find to be prescribed as the law. We find no definition embracing the idea, that the law is that which is rightly prescribed, for this would allow every judge to decide for himself whether the law, as he finds it, has been rightly prescribed according to his notion, and he would be bound by no legislative enactment or judicial determination, and uncertainty and insecurity in legal principles and property rights would be harmful to the extreme. It would be even more common than now to overrule a long line of decisions, by simply saying that the court which rendered them misunderstood, misapprehended and misapplied the law.

In the organic law of this State, the framers of the constitution clearly manifested their understanding of the true definition of law, and the importance of its prescription, and that is, that it is a rule of civil conduct prescribed &c. Under our present constitution (Constitution 1872, Art. VIII. Secs. 4 & 5) it is declared "No decision rendered by the Supreme Court of Appeals shall be considered as binding authority upon any of the inferior Courts of this State, except in the particular case decided, unless such decision is concurred in, by at least three Judges of said Court."

"When a judgment, or decree is reversed, or affirmed, by the Supreme Court of Appeals, every point fairly arising upon the record of the case, shall be considered and decided; and the reasons therefor shall be concisely stated in writing, and preserved with record of the case; and it shall be the duty of the Court to prepare a syllabus of the points adjudicated in each case concurred in by three of the Judges thereof, which shall be prefixed to the published report of the case."

One of the earliest constitutions of the old State, from which, to a considerable extent, we got our laws, declared that when a judgment or decree is reversed or affirmed by the Supreme Court of Appeals, the reasons therefor shall be stated in writing and preserved with the record of the case. As we understood the matter, a judicial decision is either the recognition or the affirmance of a rule of law, or the application of a known rule to a certain state of facts. In either case it is the promulgation of a law; the former being its simple statement as a rule; the latter including its practical scope and obligation. The maxims, definitions and judicial decisions will be found contained in treatises and digests of law, and in reports of adjudged cases, beginning with the Year Book, in the reign of Edward the II, and continued to the present day. What has been the object of these constitutional provisions, and of the practice of preserving judicial decisions from the dimmest period of antiquity to the present times? It will be observed that the converse of the proposition asserted in our constitution is true, and that is, that every decision rendered by the Supreme Court of Appeals shall be considered as binding authority upon all of the inferior Courts of the State, when there is a concurrence therein by at least three of the Judges of said Court. As before observed, it is made the constitutional duty of the Court to consider and decide every point fairly arising upon the record, and give its reasons therefor; and it is declared that such opinion shall be preserved with the record of the case. It is further made the duty of the Court to prepare a syllabus of the points adjudicated in each case concurred in by three of the Judges thereof, and it is required that such syllabus shall be prefixed to the published report of the case. The wise purpose of the framers of the constitution was to preserve in permanent and convenient form the deliverances of the highest Court of the State, that the people might know what the law is: that counsel might advise their clients with safety as to what is the settled law of the State, so that their transactions of important business affairs might be in harmony with the law and not in contravention of it; and that there might be certainty, security and stability as to titles to property, both personal and real, and particularly the latter; and that these decisions might furnish a guide to the Courts of the country, and afford precedents and rules to govern them in the administration of justice, which relates so directly and materially to the important business and property interests of the people. It certainly could not be thought for one moment, that these constitutional provisions, with reference to these matters of such paramount importance, are mere idle declarations. They mean much, and should be observed, and the purpose and the policy for which they were in--

tended should likewise be kept in view. In one case it was contended before the Supreme Court of the State that, unless a party to the litigation presented a point for adjudication the Court should not notice it, but the Court held, in harmony with the language of the constitution, that it was the duty of the Court to consider and decided all points fairly arising up on the record whether assigned as error or not. Reference is made to the case of Sweeney vs. Baker, 13 W. Va. 158.

As early as 1871, Judge Ralph L. Berkshire, then President of our Supreme Court of Appeals, in deciding a case on the subject of ancient lights (Powell vs. Simms, 5 W. Va. page 2) said, "the principles to be settled in this case are certainly important to the parties to be immediately affected by our decision, but they are much more so in their wider application to the citizens at large. And as the rule established in this case is to apply to and govern future cases in this State, the case has been examined and considered with the attention and care which its importance would seem to require."

In Windham vs. Chetwynd, 1 Burrow's English King's Bench Reports, 41, Lord Mansfield said, "When solemn determinations, acquiesced under, have settled precise cases, and become a rule of property, they ought, for the sake of certainty, to be observed. as if they had originally been made part of the statute." In section 142, of Black on Interpretation of Law, the Author says, in speaking of the doctrine of **stare decisis**, "The rule just stated is not a modern invention. It has for a very long period of time been respected by the Courts, and is now supported by a multitude of authorities.********* The authoritative interpretation put upon the written law by the Courts acquires the force of law, by becoming. as it were, a part of the statute itself. The importance of adhering to this rule is seen in the fact that the judicial explanation of an obscure or ambiguous statute, is at once accepted as correct by those whose rights or actions may be affected by the statute, and innumerable transactions will therefore depend for their validity and effect upon the performance of the judicial construction, in view of which, they were bad. The Court almost always, in deciding any question, creates a moral power above itself; and when the decision construes a statute, it is legally bound for certain purposes, to follow it as a decree emanating from paramount authority, according to its various applications in and out of the immediate case." So Lord Chancellor Cairns, speaking of revenue acts, observes, "The object must be, above that of all other acts, to maintain them and to expound them in a manner which will be consistent, and which will enable the subjects of this country to know what exactly is the amount of the charge and burden which they are to sustain. I think that in regard to statutes of that kind, above all others, it is desirable, not so much that the principle of the decision should be capable at all times of justification, as that the law should be settled, and should when once settled, be maintained without any danger of vacillation or uncertainty. Even though the Court, when the question of the construction of the statute comes up a second time, should be satisfied that the original construction was founded in error, yet, if it is seen that great mischief would ensue from a change in the interpretation, the court will yield the construction, which it would otherwise regard as the true one, in favor of that interpretation which has been universally received and long acted on. More especially when the construction given to a statute has become, what is called a rule of property, that is to say, a rule under which titles have become fixed, and upon the continuance of which property rights depend, it should be adhered to even though questionable, so long as the statute itself remains unchanged. And the same opinion has been expressed with regard to the interpretation of statutes which involved questions of practice; decisions under which a practice has grown up, though erroneous, will still be followed." If stability and certainty be so necessary in a revenue, or tariff, act, as the author says, it is unquestionably much more so in acts or decisions relating to titles.

The author further says, "Although in general this doctrine applies to judicial interpretations of statutes, settled by deliberate judgments of the court of last resort in the State, yet the rule has sometimes been extended so as to include adjudications of minor authority. Thus, in Mississippi, it is said, that when the true meaning of a statute is doubtful, a construction which has been adopted by the inferior courts for a long period of time, and upon which important rights have accrued, will not be disturbed by the Supreme Court of the State. And in Kentucky, in a similar case of doubt, a legislative exposition of the statute, together with an extra-judicial dictum of the Supreme Court, formerly made, was allowed to have a decisive influence." After presenting many reasons to support the necessity and importance of standing by decisions, in relation to matters of contract, the

author shows how especially indispensable it is to adhere to them, as to property rights. He says, "The law in regard to titles to real estate especially requires stability. As injurious as are frequent changes in the law, no decisions as to personal property or damages, require such permanency as those relating to realty. Even one decision in the latter case will be scrupuously guarded and preserved, for titles are for all time, and should stand, as passed upon if possible." ********** "Titles may be largely or wholly dependent upon previous decisions, and landed interests would be jeopardized by sudden or frequent changes in the interpretation or construction of legal principles." In support of this position will be found about twenty-five cases cited in a note in 28 Am. and Eng. Encyclo. of L 28. They are from as many as eleven states of the Union, and five of them from the Supreme Court of the United States.

In the case of Giblin vs. Jordan, 6 Cal., 418, the Supreme Court of that State was requested to reverse certain of its decisions, and Chief Justice Murray, delivering the opinion of the Court, said, "This case may be a hard one, but it forms no reason why the former decisions should be disregarded. The frequent instances in which Courts have relaxed rules to avoid the consequences of cases like this, have done more to confuse and complicate the law than all other causes put together. A rule once established, and firmly adhered to, may work apparent hardship in a few cases, but in the end will have more beneficial effect than if constantly deviated from."

In Welsh vs. Sullivan, 8 Cal., 188, the same Court said, "Courts are permitted to exercise a wide discretion, and Judges are not required or expected to overturn principles, which have been considered and acted upon as correct, thereby disturbing contracts and property, and involving every thing in inextricable confusion, simply because some abstract principle of law has been incorrectly established in the outset. The books are full of cases in which learned Judges have acknowledged the errors committed by themselves or their predecessors, and at the same time refused to overthrow the rule so established. That Judge, who from petty vanity, and who, for the sake of showing himself more wise and learned than his predecessors, would overthrow a rule which for years had settled the rights of property, should be regarded as the common enemy of mankind and unworthy of the high trust that has been confided to him." This is strong language, but it will be observed, that it is not our language. It was employed by the Supreme Court of California.

In the case of Bates vs. Belyea, Wendall, (N. Y.) 340, Judge Cowen, in speaking of the doctrine of stare decisis, says, "Numerous and valuable property rights, offensive and defensive, may be claimed under this doctrine." He further says, still speaking for the Court, "They are upon being promulgated immediately relied upon as to their character, either as confirming an old or forming a new principle of action, which, perhaps, is at once, applied to thousand of cases."

In Snyder vs. Gasicogne, 11 Texas, Judge Lipscomb, speaking for the Court, said, "The rule of stare decisis, so far as it applies to the decisions of our own Court, should not be disregarded, but on the fullest conviction that the law has been settled wrong; and even then we should pause and consider how far the reversal would effect transactions entered into and acted upon under the law of the Court." The Court then cites a number of authorities from Mississippi, Indiana, Michigan, Iowa and other States, to show the soundness of the position taken by the Court. In a number of cases, it is said that if a decision be erroneous in principle, and quickly and promptly corrected before property rights become dependent upon it, no special harm can result. But to allow a decision to stand for a number of years, and to be followed a number of times, and then reverse it, is regarded as disastrous to the rights of the people, and indeed not in harmony with good faith.

In Harron vs. Myres, 29 Ind., 470, speaking of titles to real estate, the Court said, "The question at the threshold is, whether a rule of property thus repeatedly declared by the Courts of last resort, after earnest contest and it must be supposed upon the most careful deliberation, should be deemed open for further controversy. The repose of title is important to the public. Upon the faith of these decisions our people have for a considerable period of years invested their money in real estate, the titles to which they were again and again assured, were not liable to be disturbed. There must be a just basis of confidence in the stability of judicial decisions somewhere in the history of a controverted legal question, when it may be confidently relied on, that the question is settled. It is not always that Courts may freely inquire, in determining a case before them, what is the law? Sometimes investigation should stop when it has been ascertained what has

been decided on the subject. The doctrine of **stare decisis**, should be applied to the question now presented. Such is its relation to the interest of our people, among whom real estate is so much an article of traffic, that it is not possible to estimate the extent of the evil, which would follow a decision of this Court now overruling Strong vs. Clam, (12 Ind. 37), and the cases which followed it, and if the doctrine of this case be admitted to be wrong, it is yet quite obvious, that it has already accomplished most of the harm that ever can result from it, while a change now would sow a wide crop of serious evils to the injury of those who are innocent, and who have purchased and sold real estate upon the faith of a doctrine, declared by this Court no less than half a dozen times within the last ten years."

In Stout vs. the County of Grant, 8 N. E. R., on page 226, the Supreme Court of Indiana, speaking upon the subject of **stare decisis**, says, "Conceding that this Court, as at present constituted, might, as an original question, feel inclined to place a different construction upon the section of the statute involving this cause, we would nevertheless regard the reasons for such a different construction, as too shadowy and unsatisfactory ,and the lapse of time too great, to justify us in overruling the case of Edgar vs. Board of Commissioners, and the later case founded upon it. Three regular sessions of the legislature, and several extra sessions, have been held since the case of Edgar vs. Board of Commissioners was decided, and nothing has been enacted changing, or in any manner extending the limit of compensation prescribed by that case. It may therefore be justly claimed that the legislature has, for a series of years, acquiesced in the conclusion then reached. A fair case for the application of the doctrine of **stare decisis** is presented. In the case of Frank and others vs. Evansville Company, decided in 1887, 12 N. E. R., a question of the right of the Wabash and Erie Canal in certain real estate was involved, and the Supreme Court of that State was urged, by able and elaborate argument, to reverse a former decision. It refused to do so. Among other good reasons for such refusal, it said, "We acquiesce in, rather than approve of, the doctrine of these cases upon the question stated. This we do, not because the decision of the question in either of the cases meets the approval of our judgment, but for the reason stated in the case last cited, that since the decision of the Burkhart case, large rights may have been acquired on the faith of that decision, that would be utterly destroyed by the overruling of it. The case is one of that class to which the doctrine of **stare decisis** applies with all its force." The Court further says, "Nearly fifteen years have now elapsed since this Court decided, in Water Works Company vs. Burkhart, where lands had been taken and used under the laws, which provided for the construction of the Wabash and Erie Canal, that the estate so taken in such lands, was an estate in fee simple, and not a mere easement therein. Upon the faith of that decision we may well suppose that during those years, large investments have been made in the lands so taken and used for the construction of the canal, and to that extent the decision in that case must be regarded as a rule of property." For these reasons the Court refused to disturb the former decisions. "Where a Court has erroneously held that certain things were sufficient to give jurisdiction, and titles have been built thereon, the doctrine of **stare decisis** forbids the overruling of these decisions. But where the Court has erroneously held that certain defects prevented jurisdiction from attaching or caused its loss, the doctrine of **stare decisis** does not forbid the overruling of those decisions, because the sooner they are overruled, the more titles are saved." Vanfleet's Collateral Attack, Sec. 1, page 4.

In Skipwith vs. Cunningham, 8 Leigh 278, Tucker, President, said:

"The counsel in this case have very laboriously discussed a question which appears to me to have been completely closed by the well considered decisions of this Court." He referred to the two cases of The Mutual Assurance Society vs. Stanard, 4 Munf., 539 and Coutts vs. Walker, 2 Leigh, 268. They have reference to the relation of a judgment to the first day of the term. Judge Tucker further said:—After this deliberate judgment of the Court affirming the principle which had been settled in a former case, I think the question should not have been suffered to be again stirred; for it must be remembered that this is not a mere question of practice. The principle is in effect a canon of property, and directly involves, in various instances, the title to real estate. It is unnecessary then, that we should enter into this investigation anew, or follow Counsel through all their learned arguments."

In the case of Patrick Cunningham et al vs. William Dorsey, 3 W. Va., 298, that distinguished lawyer, Charles J. Faulkner, said: "The evidence of what the common law is,

is to be found in the decisions of the Courts of Justice, and the treatises of learned jurists. The reports of judicial decisions contain the most certain evidence of the common law, and all properly constituted Courts consider it their duty to adhere to the authority of adjudged cases. In Kent, 476, 'It is my wish and my comfort' said the distinguished Lord Kenyon, "to stand **super antiquas vias**. I cannot legislate, but by my industry, I can discover what my predecessors have done, and will tread in their footsteps." Iet us see what that august tribunal, the Supreme Court of the United States, has said on this subject.

Chief Justice Marshall said "The common law of England was and is the common law of this State,, and as an appeal from the Courts of Virginia lay to a tribunal in England, which would be governed by the decisions of the Courts, the decisions of those Courts, made before the Revolution, have all that claim to authority, which is allowed to Appellate Courts."

In the Propeller Genesee Chief v. Fitzhugh, 12 Howard, 458, 13 L. Ed., 1058, the Supreme Court of the U. S., said, "A Court is bound to follow its previous decisions, laying down rules by which rights of property have been determined; but decisions, not affecting property rights may be disregarded.

In Saranac Land Company vs. Comptroller, 177 U. S., 326, 44 L. Ed., 791, The Supreme Court of the U. S., said, "Decision of Supreme Court affirming State Supreme Court, which sustained validity of statute of limitations, alleged to impair obligation of contract, in that, it deprived of remedy, must be deemed conclusive as to existence of remedy, and will be followed in later case on error to inferior Federal Court."

In the case of Wright vs. Sill, 2 Black, 544, 17 L Ed., 333, the Supreme Court of the U. S., further said, "Questions repeatedly before the Court, and uniformly decided in the same way, will not be re-examined, whatever differences of opinion may have existed originally in the Supreme Court."

In the case of Minnesota Company vs. National Company, 3 Wall, 334, 18 L. Ed., 42, the Supreme Court of the U. S., well and wisely declared, "Doubtful questions affecting land titles should not be considered open, when once decided, nor should litigants be encouraged to speculate on change of law, when Courts personnel is changed."

In Pollock vs. Farmers' Loan Company, 157 U. S., 574, 39 L. Ed., 759, the Supreme Court of the U. S. further said, "The salutary doctrine of **stare decisis** is to be adhered to on all proper occasions, but it only arises in respect to decisions directly upon points in issue."

In the case of Lotta Wanna, 21 Wall., 571, 22 L. Ed., 654, U. S. Supreme Court of Appeals said, "Solemn judgment long relied on, as a rule of property, should not be overruled although erroneous."

When the student begins the study of law, and turns to Blackstone's Commentaries. he will be taught, that it is an established rule, to abide by a former precedent, where the same points come again in litigation, as well to keep the scale of justice even and steady, and not liable to waver with every new Judge's opinion, as also because the law in that case, being solemnly declared and determined, what before was uncertain, and perhaps indifferent, is now become a permanent rule, which it is not in the breast of any subsequent Judge to alter or vary from, according to his private sentiments, he being sworn to determine, not according to his own private judgment, but according to the known laws and customs of the land, not delegated to pronounce a new law, but to maintain and expound the old one. In a word, the student of law is taught that the doctrine of the law is, that precedents and rules must be followed. Is it possible that such student must unlearn all that he has thus learned from such authentic source?

The Court of Appeals of Virginia in 1837, decided a question concerning fraudulent conveyances, which decision is reported in 8 Leigh, page 271. It is the case of Skipwith vs. Cunningham. It was followed by the Supreme Court of Virginia in a case reported in 1 Grat., and again in a case reported in 8 Grat., and again in a case reported in 18 Grat. In the case of Clark vs. Figgins, 27 W. Va., our Supreme Court was asked to overrule these decisions. After citing a number of decisions in support of the doctrine, stand by the decisions, our Court of Appeals well and wisely said, "where a decision has been rendered in the State of Virginia, and followed in two other cases in Virginia, before the separation, the decision will be followed by this Court, without inquiring into the grounds on which such decisions are based." See opinion of Judge Johnson, page 670, in which Judges Green,

Snyder and Woods concur. In the opinion much importance is attached to the fact, that the community acted upon the decisions of the Supreme Court of Virginia, as a just declaration, and as a proper exposition of the law, and that people had regulated their actions and contracts by such decisions. The Court declares, in that case, that it would be extremely inconvenient to the public, if precedents were not duly regarded and implicitly followed. Judge Johnson well says, "it is by the notoriety and stability of such rules, that professional men can give safe advice to those who consult them, and people in general, can venture with confidence to buy and trust and deal with each other." Numerous decisions are cited to support the doctrine, then announced by the Supreme Court of Appeals of this State. In this same opinion, it is said "where things are settled and rendered certain, it will not be material how, since they are so, and that all people know how to act." Judge Johnson quoting from Judge Kent says, "If we judge against former precedents," said Chief Justice Prisot, "it will be a bad example to barristers and students of law, and they will not give any credit to the books, or have any faith in them." He further says, "The Courts have adhered to these principles with almost unswerving fidelity. In some instances they have been departed from, but in those cases it has, as a rule, worked far more harm than good." He further says, "It is only safe to know how the question has been settled, if settled at all, and then not depart from the rule."

In the case of Pyles vs. Furniture Company, 30 W. Va., 123, our Court of Appeals was asked to reverse a single decision of the Supreme Court of Virginia, touching the power of an insolvent corporation to prefer creditors. Our Court of Appeals said, in overruling the request, "For nearly twenty-five years, in fact during almost the whole of our existence, as a State, all of our people have been acting under the law, as laid down in Burr vs. McDonald, and the principles there settled, have been acted upon as a rule of property, and we could not, if we would, change that law now. The legislature alone can change it. This Court has not the power."

In Bailey vs. Gardner, 31 W. Va., 94, our Court of Appeals was urged to overturn the precedents, and do justice in that hard case. The Court admitted the great hardship of the case, and said on page 101, "'But hard as this case, and thousandsl ike it are, no relief can be afforded, except by the legislature. It is not for the Courts to correct such hardships in common law. Courts, as it is, are often charged with legislating—with producing judge made law." The Court further said in substance that the Legislature must afford the remedy, and that the Courts dare not do so. For by doing so they would burst through that barrier, the respect for which gives them all their power and influence. It may be interesting to recall the fact, that the legislature has since relieved the hardship, probably in response to this recommendation by the Court, by making a married woman's earnings her own property.

In the case of DeQuasie vs. Harris, 16 W. Va., our Court of Appeals, quoting with approval from an Ohio case, upon the subject of the validity of a tax deed, said, "It would have been well in the first instance perhaps to have held this doctrine, but the opposite principle has always been observed and been too frequently asserted to be disturbed, except by legislative interference, which would give it a prospective operation." Our Court at this time was composed of Judges Green, Haymond, Moore and Johnson.

In the case of the State vs. Sponaugle et al. 45 W. Va., 427, when our Court of Appeals was asked to hold as invalid certain constitutional provisions, legislative enactments and judicial decisions, as contravening the United States constitution, it said with the greatest propriety and wisdom, "Titles to thousand and thousand of acres, the homes of our people, rest upon this long line of enactment and decision; and for this Court to reverse so many cases, and annul the constitutional provision, would shake those titles, and turn thousands from their homes. The rule of **stare decisis**, binds us to adhere to them, especially as titles to property rest on those decisions. Not to do so, would spread disaster, the extent of which would be appalling. And this is a consideration justly and deeply entering into the question, as the United States Supreme Court said, speaking through Justice Harlan, in King, vs. Mullens, decided in 1898." The Court was at that time composed of Judges Brannon, English, Dent and McWhorter.

In the case of Central Land Company vs. Laidley, 32 W. Va., the Court of Appeals of this State, speaking through Judge Brannon, said:—"We must in deciding this cause start on our road with that fact settled, and follow the logical and legal sequences, lead where they may. A line of decisions by this Court holds, that a married woman's deed

with such defective certificate is not merely voidable but is utterly void abinitio. No power can now change this rule but that of the legislature." But perhaps the latest judicial deliverance on this subject from the highest court of our own State, will be found in the opinion of Judge Dent, in the case of Bassel vs. Caywood, 46 S. E. R., 159. In that case our Appellate Court was urged to reverse a decision, Holden vs. Boggess, 20 W. Va., 62, wherein it had been held that the purchaser who buys land at a judicial sale, subject to a contingent right of dower in the surplus, assumes the risk thereof as a charge on the land. In refusing to overrule this decision, Judge Dent said with propriety and wisdom, we think, "The decision established a rule of propriety, which ought not to be disturbed except for the most cogent reasons. The Appellee's case furnishes no such reason, for he purchased with full knowledge of the rule, and which probably enabled him to purchase the property for a less price than he would have had to pay, had his present contention been at that time established by the decision of this Court Other bidders, no doubt, accepted such rule as the law of the land, and were deterred from higher bidding by reason of such contingency hanging over the property." He also speaks of the great harm that might result to many persons by overruling a decision which had been standing for over twenty years, and truly says: "When the law is known in advance, purchasers are presumed to purchase with full knowledge thereof, and it would be unfair and unjust to change it so as to affect transactions of which it has become a part." This opinion, most salutary, it would seem, in so far as it adheres to the true and sound rule, involves a most solemn admission of the correctness of all that has been said on this important subject. The Court refused to disturb the one decision which the appellee pointed out, because it established a rule of property, because the public had accepted the decision assailed, as a rule of property, because in the decision of the case sought to be overthrown, which seemed to be contrary to the language of the statute, the Court had created a power above itself in the judgment of our Appellate Court. The decision confirms what has been said, as to the impropriety of such condition as is calculated to encourage litigants to speculate upon the prospect of a change of the law, with a change of the personnel of the Court. The Court cites a number of decisions wherein others had been reversed, and suggests that the appellee was probably urged on to insist upon the overthrow of the decision in that case, because of the fact, that the court had reversed itself in a number of other cases, specifying them. If this be true, it is a strong reason against the practice of reversing decisions, for it is calculated to invite lawyers and litigants to dissatisfaction with the law as it is, and stimulates the bar and bench to look beyond the law as it is, to see whether it, is in their judgment, right on principle, or is supported by right reason. The court says that the case lacks the necessity and justice that influenced the court in reversing the other decisions. But it should be borne in mind, that the judges, who rendered the decisions reversed, saw no injustice in them, and for years the legislature had seen no reason to change the law as enunciated by these decisions.

In Grigon vs. Astor, 2 Howard, (U. S.) 343, the Supreme Court of the United States, speaking through Judge Baldwin said: "We do not deem it necessary now or hereafter to retrace the reason or the authorities on which the decisions of this Court in that or the cases which preceded it, rested; they are founded on the oldest and most sacred principles of the common law. Time has consecrated them; the courts of the States have followed them, and this Court has never departed from them. They are rules of property on which the repose of the country depends."

In Fishback's Manuel of Elementary Law, a very late and excellent work, the author says in section 87, "What is common law is declared by the courts, and what the courts have declared to be the law is found in their records and published decisions. When a rule of law has once been declared it ought not to be disturbed unless by a court of appeal or review, and never by the same court, unless upon very urgent reasons and upon a clear manifestation of error; and any other practice leaves the citizen in a perplexing uncertainty as to the law. A precedent, even where it appears to be flatly unreasonable and unjust, may and should be followed if it has been acquiesced in and for a long period, or if it has become a rule of property, so that titles have been acquired in reliance upon it, and vested rights will be disturbed by overruling it. In such a case the better course is to leave the correction of the error with the legislature which can so shape its action as to make it prospective only, and thus prevent the injurious consequences that must follow from judicially declaring the previous decisions unfounded."

In the case of Hole vs. Rittenhouse, 2 Philips R., 47, in a vigorous dissenting opinion, Chief Justice J. S. Black said: "The judgment now about to be given is one of 'death's doings.' No one can doubt that if Judge Gibson and Judge Coulter had lived, the plaintiff could not have been thus deprived of his property, and thousands of other men would have been saved from the imminent danger to which they are now exposed of losing the homes they have labored and paid for. But they are dead; and the law which should have protected those sacred rights has died with them. It is a melancholy reflection that the property of a citizen should be held by a tenure so frail. But 'new lords, new laws' is the order of the day. Hereafter, if any man be offered a title which the Supreme Court has decided to be good, let him not buy it if the judges who made the decision are dead; if they are living, let him get an insurance on their lives, for ye know not what a day nor an hour may bring forth."

"The majority of the Court changes, on the average, once every nine years, without counting the chances of death and resignation. If each new set of judges shall consider themselves at liberty to overthrow the doctrines of their predecessors, our system of jurisprudence (if system it can be called) would be the most fickle, uncertain and vicious that the civilized world ever saw. A French constitution, or a South American Republic, or a Mexican administration would be an immortal thing in comparison to the short-lived principles of Pennsylvania law. The rules of property, which ought to be as steadfast as the hills, will become as unstable as the waves. To avoid this great calamity I know of no resource but that of **stare decisis.**"

Thus far we have been gleaning as briefly as consistent with the importance of the subject, from official sources generally, and we now desire to make some short extracts from addresses of members of this Association. Before we do so, however, we desire to disclaim any intention to criticise any Court for its decision, for we have not yet come to the point of criticism or commendation. Our Courts, being like other human institutions, may deserve some of both. Our purpose is simply to show the importance of the subject, and how fully some of the leading members of the legal profession of the State have been impressed with its importance, and indeed even with the gravity of the situation resulting from overruling former decisions.

In a very able paper read by Mr. James F. Brown of the Charleston Bar, in the Seventeenth Annual meeting of this Association, on page 61, he speaks of the importance of stability of land titles. In speaking of the status of land titles in West Virginia, and the evils which affect them, he says:—"The ills are manifold, in part inherited from the mother state; more largely of our own creation by acts of commission and omission."

On page 67, he says, "The contribution in our own State, to the confusion has been chiefly through the courts, who, in following the example of their predecessors, have outdistanced them many times.

Aside from the evils, outgrowth of the early method of granting titles, may be instanced many others scarce less vicious, from time to time added, largely the result of well intended but ill advised judicial legislation." He further says, on page 68, "It was once said by an eminent jurist upon the West Virginia bench, that when a question was decided three times by an Appellate Court, one way, the doctrine of **stare decisis** was conclusive even upon the court of last resort. It had been wiser had the conclusion been, that single decision bound it, especially upon rules affecting titles to property, and the valaidity of deeds, inasmuch as by the constitution inferior courts are bound by those decisions, the Bar of the State bound, in advising clients to treat them as the law; and the people at large to accept the enunciation of that august body as such, but unfortunately, the doctrine of **stare decisis,** seems to have become obsolete of later years.

Illustrations fill the reports; in fact, the especial pride of some Judges seems to have been to reverse precedents. One, vital upon questions of title, is found in the case of Stockton vs. Morris, decided in 1894, overruling the case of Hopkins vs. Ward, 6 Muns. 38, decided in 1817."

After further reference to the subject Mr. Brown says: "It remained for the Supreme Court of Appeals of West Virginia, in 1894 to uproot the title to nearly half the lands in the southern part of the State by overruling the decision, contemporary with the act, and holding that to recover as claimants of ever so small a portion of any one of these huge grants the plaintiff must, as a condition precedent locate every acre of general as well as specific reservations from the whole grant; an absolute impossibility in the majority of the

cases, as the reservations were but rough estimates by careless and irresponsible surveyors, wherefore no location ever existed for part of the acres so reserved." Mr. Brown concludes his remarks with certain recommendations or suggestions. The first one reads as follows:—"An amendment to the constitution requiring the Courts to construe statutes according to their plain intent, rather than as some Court of some other State has construed some foreign statute more or less dissimilar. And, further provision, that the doctrine of **stare decisis** shall govern the Appellate Court as well as the inferior ones upon all questions once decided by it, at least as to transactions subsequent in date, affecting titles; leaving it to the legislatures to correct, by prospective legislation any possible mistake the Court may make. By such provision, giving to the Bar safety in advising in accord with opinions rendered; and to the people security in shaping their transactions accordingly."

In Mr. Crogan's address, as President of this Association, at the Twelfth Annual meeting, held at Morgantown, in 1897, he is equally emphatic in expressing his views as to the importance and soundness of the doctrine of **stare decisis**, and he quotes from a decision of the Supreme Court of Appeals of this State, wherein that body said, "The rule of **stare decisis** applies with impregnable force in this instance, and from which there is no way of escape, even if the Court were so inclined, unless by an utter and reprehensible disregard of all precedent." And he insists that the only wise means of correcting mistakes, even mistakes of the Court, is by legislative enactment and not by judicial construction.

We desire to call attention briefly to a few decisions of our Appellate Court reversing former decisions. Under our present constitution it is provided among other things on the subject, "No fact tried by a jury shall be otherwise re-examined in any case, than according to the rules of common law." In the case of Barlow vs. Daniels, 25 W. Va., 512, it was held that this constitutional provision applied to cases before a Justice, which were tried by a jury of six, and under that decision a re-trial could not be had in the Circuit Court by means of appeal, and the lawyers of the State were required to prepare bills of exception and procure them to be signed by a justice, and to seek redress by way of **certiorari**. Only think of it, a justice and a lawyer wrestling over a bill of exceptions! The justice would of course be expected to know nothing on earth about it, and he would never disappoint the expectation. This decision was followed in the case of Hickman vs. Railroad Company, 30 W. Va., Vandervort vs. Fouse, 30 W. Va., and Fouse vs. Vandervort 30 W. Va. There are, therefore, as many as four decisions of the Supreme Court of the State sustaining this view. But the Court of Appeals in Richmond vs. Henderson, 48 W. Va., 380, overruled each of these four decisions, and expressly held that an appeal lies from the judgment of a justice rendered upon the verdict of a jury, just as in the cases tried by him without a jury." The decisions overruled related to practice or procedure. The reversal of these decisions promoted the administration of justice and afforded a great convenience to the legal profession and to suitors. It is unfortunate that the constitutional provision was not at first construed as it was finally, for whether mere procedure or the substantial rights of a party be involved, the overruling of the earlier decisions, is much calculated to arouse dissatisfaction with the law, and disrespect for it, and as we understand the matter, Courts should be reluctant to reverse decisions, even where they relate to practice or procedure only. But as before remarked, the last decision was the wise one. It could not be said that the evil resulting from the decisions, denying the right of appeal, should be remedied by the legislature, because it was a question of the construction of a constitutional provision. Besides this, the courts have generally held, as we understand, since the last decision, that where a case was in the Circuit Court on **certiorari**, it was practically there by way of appeal, and such cases were held for trial as if appealed. So that no harm resulted from the last decision, but great good and convenience followed as a result. And this was peculiarly a case, in which the court properly declined to be bound by the doctrine of **stare decisis**, and the reversal of the four former decisions was a proper application of the power of the court to reverse older decisions, where they were manifestly wrong and worked great inconvenience and hardship. The establishment of a new rule hurt nobody, but promoted ease and certainty in the administration of justice.

Another case wherein a number of decisions have been reversed, relating to the subject of handwriting is much more questionable. In the case of Rowt's admr. vs. Kyle's admr. 1 Leigh, 216, decided in May, 1829, proof of handwriting by comparison was disallowed. It was permitted only to the extent of suffering a jury to compare the signature in question with other signatures in the case for some proper purpose. This decision was followed in Clay vs. Robinson's admr., 7 W. Va., 348; Clay vs. Alderson, 10 W. Va., 49; State vs.

Henderson, 29 W. Va., 148; State vs. Koontz, 31 W. Va., 137, and Flowers vs. Fletcher, 40 W. Va., 108. So that, it was well settled in this State by as many as five decisions, that handwriting could not be proven or disproven by comparison, except to the extent of allowing such comparison by the jury as before shown. In Tower vs. Whip, 53 W. Va., 153, all these cases were practically overruled. Under this last decision, an expert witness may compare such papers and give his opinion as to whether the handwriting in question is or is not genuine. The Court below held with the old decisions, but was reversed on this and other grounds. The case was decided September 8, 1902. The Circuit Judge had, with apparent propriety, followed the adjudications by the Appellate Court on this subject, as required by the constitution, but was found to be in error. In other words, an important rule of evidence which was in force since the birth of the State, to September 8, 1902, was in a great measure, at least, reversed. The Court says, "In West Virginia, it is settled law that the genuineness of an instrument can not be proven or disproven by comparison with other writings; as a general rule, comparison of handwritings is not allowed." The Court says that it never could see the soundness of this rule and immediately proceeded to unsettle this settled law. But whether the Court could see the soundness of the rule or not, their predecessors established it after mature consideration and earnest contest, as must be supposed, and it became a rule of evidence. We seriously doubt the wisdom of the last decision, and especially because it is calculated to render uncertain, insecure and unstable important legal principles. It requires a case to be tried one day by a certain rule of evidence, and another day by an entirely different rule, although there has been no legislation on the subject. However, opinion may be divided on this question, and we make no special complaint. The case of Fry vs. Miley, 46 S. E. R., 125, is interesting. It is held in that case that a suit to set aside a fraudulent conveyance, under section 2 of chapter 133 of the Code of 1899, instituted for a legal demand by a creditor at large, before the debt on which it is predicated becomes due and payable, can not be sustained, and according to Syl. 1, inadvertent rulings to the contrary in Chrislip vs. Teter, 43 W. Va., 356, and Bank vs. Prager, 50 W. Va., 660, are disapproved. It appears that before the date of this decision, December 5th, 1903, it was generally understood that a creditor in such case might sue to annul a fraudulent conveyance, whether his debt was due or not, and we believe that this was generally understood to be the law. Since that day, however, the opposite doctrine has been declared to be the law, and the new decision applies to all cases except those actually decided. All cases pending on that day, under the two decisions formerly rendered, mut fail, however meritorious, because of the reversal of an important rule established and sustained by two decisions. For the reasons already given, we think it was not a wise policy to reverse these decisions, and as before remarked, chiefly because they had been accepted by the bench and bar as well as by the people, as the law of the land, and many proceedings were instituted upon debts not due in reliance upon these decisions. The decision of our court in Bettman vs. Harness, 42 W. Va., 433, relating to the jurisdiction of a court of equity as to a question of title, is reversed by Freer vs. Davis, 52 W. Va., 1. At least it so appears in the syllabus, but judging from the opinion of the court the question upon which later overruled the former decision was really not in the case.

Another case of reversal of former decisions which will be noticed is that of Mayor vs. Frobe, 40 W. Va., 247, decided March 27, 1895, relating to the subject of exemplary damages.

In the case of Pegram vs. Storts, 31 W. Va., 220, decided February 28, 1888, it was held that exemplary damages, as used in the statute cited, did not allow the jury to visit damages upon the defendant as a punishment for illegally selling liquor to the plaintiff's husband. Judge Green's opinion in the case covers one hundred and twenty-seven pages, and shows great learning, labor and research. In this opinion Judges Johnson, Snyder and Woods concurred. It was followed, without question, in Beck vs. Thompson, 31 W. Va., 549. So that, this was the proper construction of section 16 of chapter 107, Acts 1877, from February 28, 1888, until March 27th, 1895, as twice decided by our court of last resort. But in Mayor vs. Frobe, the two opinions were overruled. In a suit tried before the decision of the last case, exemplary damages could not have been imposed, but in one tried after that decision such damages were allowable. We must again remove a decision from the 40th to the 31st Volume of the W. Va., Reports.

In the opinion of Judge Dent overruling the doctrine of the other two cases, he says: "In the well considered case of Pegram vs. Stortz the Supreme Court of this State, instead of following the hard beaten path as clearly indicated by the decided weight of authority

reaching beyond the memory of man into an unsearchable antiquity, and seeking to discover the underlying reason thereof, because the law appeared to their minds illogical, heroically assumed the responsibility, and endeavored to dam up the vast increasing stream of judicial opinion, and turn it into a new and untried channel." Here we find complaint of Judge Green and his distinguished associates, for overruling decisions because they appeared to **their minds** illogical and because they had not "followed the hard beaten path," and the court then immediately proceeds to overrule opinions that appeared to **their minds** to be illogical, and they leave the hard beaten path over which Judges Green, Johnson, Snyder and Woods had traveled and which they had so distinctly marked and broadened. The first ground upon which Judge Green's opinion is based, is said to be "technical, trivial and wholly untenable." The second ground is said to be "equally untenable." The third ground is regarded as "the most serious."

In Hale on Damages, this reversal of the other two decisions is said to be based on scriptural grounds. But whether the two decisions reversed be right or wrong, is immaterial. They were the prescribed or established law of the land, and the rule should have been changed by legislation, and not by judicial construction. However, the evil resulting from such change is not so serious and harmful as it would have been had it reversed a rule of property.

The decisions thus far discussed, although they tended strongly to unsettle and disturb existing conditions, and to inspire distrust for the law, the evils to follow them are not so grave and serious as those that must result from the overthrow of a rule of property.

We will notice as briefly as we can two decisions of the latter class which we regard as peculiarly unfortunate and as hurtful to the extreme to a large number of innocent people, and as directly contrary to the doctrine of **stare decisis**, as supported by the numerous authorities cited and innumerable others that might be given. To the latter class belongs the reversal of former adjudications in the case of Morgan vs. Snodgrass, 49 W. Va., 387, in which the decision was rendered March 30, 1901.

Since the formation of our State, until the 21st day of February, 1891, when chapter 23 of the session of that year went into effect, the property of a married woman, conveyed by herself and husband, did not pass to her vendee unless and until the deed therefor was recorded as required by law. The statute declared that "when the privy examination, acknowledgment and declaration of a married woman shall have been so taken and recorded in the office of the County Court, or when the same shall have been so taken and certified as aforesaid, and the writing to which such certificate is annexed, or on which it is, shall have been delivered to the proper clerk of the County Court and admitted to record as to the husband as well as the wife, such writing shall operate to convey from the wife's all her dower and right, title and interest of every nature in the real estate conveyed thereby." In brief, in all such cases the acknowledgment and recordation were indispensable to pass title to the vendee. The statute would not seem to be open to construction. In the case of Leftwich vs. Neal, 7 W. Va., 569, the statute was enforced as written. In Rollins vs. Menager, 22 W. Va., 461, the court simply enforced the statute as printed. See Syl. 1, and Judge Green's opinion, page 473. To the same effect is Nickell vs. Tomlison, 27 W. Va., 697. The case of Rosenour vs. Rosenour, 47 W. Va., 554, is also given in the overruling opinion as being in line with the other opinions overruled. The statute itself, and the opinions construing it, would seem to leave no room for doubt, that recordation, or delivery for record, was a condition precedent to the vesting of title. It is manifest, that the legislature regarded this as the law, for by section 6 of chapter 23 of the Acts of 1891, it is declared, that when such acknowledgment, as required by section 4, shall have been taken and certified, the writing shall operate to convey all right, title, interest &c., as if she were an unmarried woman, thus rendering recordation unnecessary to vest title.

In the case of Morgan vs. Snodgrass, 49 W. Va., 387, decided March 30, 1901, in construing the old act, repealed February 21, 1891, it is held that recordation is not essential to pass title, and that the provision of the statute requiring it is directory and non-essential. Now what is the effect of this last decision? It was made ten years, one month and nine days after the act, which removed the evil, had been passed. The act of the legislature operates prospectively and not retroactively. It hurts nobody. The decision operates retroactively, and it establishes a policy, and makes it operate since the birth of the State, which is the very opposite to that which was fixed by the other decisions, and may be harmful to many. Under the statute as then construed, recordation was necessary to vest title. Under that same statute, as now construed, recordation is not essential to pass title. The

opinion of the court rendered March 30, 1901, reported in 49 W. Va., page 387, must be read in every respect as if it had been rendered July 13, 1874, and reported in 7 W. Va., 569. This decision operates twenty-six years, eight months and seventeen days before it was rendered and to make it the more unfortunate, it reverses decisions relating to a rule of property, a rule relating to real estate. If this period of over twenty-six years had been covered by sleep, no baneful effect would follow, but this has not been the case. On the contrary the people have been alive, active and progressive. They have dealt in real estate in reliance upon the statute as construed by the cases now reversed, which we humbly submit was never open to construction. Let us suppose that before the passage of the Act of 1891, a husband and wife had conveyed her property to another, who failed to record his deed, as the law plainly told him he should do, in order to vest title in him. The wife dies. The property descends to her heirs, who convey it to others for valuable consideration. The grantors become insolvent, and the general warranty in the deed would be worthless. Under the old statute as construed these grantees from the heirs would have a perfect title. Under the last decision, the grantees of the woman and her husband would have a perfect title, and could recover the land from those whose title the law had repeatedly said was perfect. In all such cases such would be the result, unless the statute of limitations would afford protection against such injustice.

We will conclude by noticing a case of sweeping and general public importance. It is that of Er Ralston vs. Town of Weston, 46 W. Va., 544, decided April 22, 1899.

This decision, either expressly or logically, overrules the cases of City of Wheeling vs. Campbell et al., 12 W. Va., 86, decided November 17, 1877; Forsyth vs. City of Wheeling, 19 W. Va., 318, decided March 25, 1882; Mason City Salt and Mining Company vs. Town of Mason, 28 W. Va., 211, decided December 15, 1883; Taylor vs. Philippi, 35 W. Va., 554, decided November 14, 1891; Tsass vs. City of St. Albans et al, 38 W. Va., 1, decided March 2, 1893; Jarvis vs. Town of Grafton, 44 W. Va., 453, decided March 26, 1898; and there is another case to the same effect in West Virginia which we have seen, but which we are unable at the present to name. These seven cases settled the doctrine beyond all question, as would be supposed, that the statute of limitations, in the absence of an express provision to the contrary, runs against a municipal corporation, the same as against a natural person, and that there was no provision to the contrary in West Virginia. They also settle the law, as every body would assume, that the maxim **nullum tempus occurrit regi** applies to sovereignty alone, and not to municipal corporations; that is, where this maxim is in force, it protected the State in her sovereignty, and could not be made to apply to protect a town against adverse possession. To use the oft-repeated language of our Court of Appeals, this was settled law. It was regarded as so definitely settled in West Virginia, that Judge Holt said in Teass vs. St. Albans, in answer to the other view, "But it is settled otherwise in this State. See City of Wheeling vs. Campbell, 12 W. Va., 86, where Judge Johnson after an elaborate examination of authorities, states the law as follows: "The statute of limitations, in the absence of an express provision to the contrary, runs against a municipal corporation the same as against a natural person." He then cites Taylor vs. Philippi and other cases. Judge Holt continues: "The tendency in this State to end litigation and quiet titles is so strong that, by express provision, 'every statute of limitations, unless otherwise expressly provided, shall apply to the State.' " It will thus be seen that from 1877 to 1899 a period of twenty-two years, an encroaching occupant upon a road or street for the statutory period, acquired a title to the extent of the encroachment, as perfectly as if he had held against an individual. Such encroaching occupant was solemnly informed by the Supreme Court of this State as many as seven times that his title was perfect and in 1899, he was told by the same court, that he had been a trespasser for all these years, and that he had been maintaining a nuisance, and that his property must be destroyed, and that he deserved just such treatment. In other words, he is informed by the Supreme Court of Appeals, notwithstanding its seven deliverances to the contrary, that his claim is unconscionable and selfish, and that he is covetous.

The Court further speaking through Judge Dent, says: "The doctrine of **stare decisis** can not be invoked to perpetuate public nuisance, or destroy the sovereignty or welfare of the people." It seems to us that if there be seven adjudications declaring that the statute of limitations will operate to give a person a title to real estate, thus establishing a rule of property, it would be peculiarly a position which would be protected by the doctrine of **stare decisis**. The Court seems to overlook the fact, that for twenty-two years, thirteen judges, at least, in seven distinct and unanimous decisions, had informed such occupant that

he was not maintaining a public nuisance; that he was not destroying the sovereignty and the welfare of the people, but on the contrary that his right was perfect and indefeasible. It may be well to inquire briefly what is the effect of adverse possession. It is to transfer the title of the true owner to the possessor, even if a wrongful possessor. The effect of the statute is to render a continued adversary possession for ten years conclusive in an action of ejectment not only against the possession, but the title of the true owner. This result is so absolute that this possession effects a transfer of the legal title, and it is not only a sufficient defense on the part of the defendant, but it is sufficient ground for the plaintiff to recover the land to which he has so acquired title, against the strongest proof of better title. It would seem to be useless to cite authorities to support this position. It is so perfectly well established, and so generally understood to be the settled law of this State, and indeed of other States. Any one doubting the correctness of this claim will certainly find that his doubts are not well founded by consulting the authorities.

Plainly, after the lapse of ten years, the statute of limitations would operate to vest in an encroaching adverse occupant, as perfect title as he could have acquired by grant from the Commonwealth. It will be observed that the statute of limitations makes no exception in favor of municipal corporations. When the case of the City of Wheeling vs. Campbell was decided November 17th, 1877, the act of the legislature opened to receive it, as it were. When the case of Forsyth vs. City of Wheeling was decided on the 25th day of March, 1882, it was absorbed by the act. When the case of Taylor vs. Philippi was determined on the 1st day of November 1891, the statute of limitations embraced it. When final judgment was pronounced on the 22nd day of March, 1893, in Teass vs. St. Albans, and on the 15th day of December, 1883, in Mason City &c. vs. Town of Mason, 23 W. Va., highest Court was pronounced as late as 26th of March, 1898, in the case of Jarvis vs. the opinion of the Court entered the legislation on the subject. When the opinion of our Grafton, it was admitted into the act of limitation. In brief, these decisions of our Supreme Court of Appeals became part of the legislative enactment upon the subject. The act of the legislature, with these decisions as part of it, became the law of the State, upon the question. The effect of the act of limitation, as thus repeatedly construed, has been to vest in adverse possessors a perfect title as against municipal corporations and all others. When no exception is made by a statute of limitation, as in this case, none can be made by the Court. Southerland on Stat. Construction, section 427; Bank vs. Dalton, 9 How., 522; McIves vs. Smith Ragon, 2 Wheat. 29; Troup vs. Smith, 20 John 33; Callis vs. Waddy, 2 Muns., 511; Hamilton vs. Smith, 3 Murphrey, 115; Black on Int. of L. page 332 and cases cited.

In Webb vs. Hall, 21 W. Va., 325, it was held that adverse possession will create a vested right in the possessor, and that an act of the legislature cannot disturb such vested right. Suppose the Legislature had been in session on the 22nd day of April, 1899, the day of the decision in the Ralston case, and had passed an act declaring that the statute of limitations should not apply to municipal corporations, and had undertaken to make the act retroactive. Under the decision in Webb vs. Hall, 21 W. Va., and numerous other cases, such act would have been unconstitutional. Yet the Supreme Court of Appeals on that day, by construction, makes a law which accomplishes just such result as the unconstitutional act would accomplish, had it been enforced. It affords no satisfaction to him, whose property is ruined or destroyed, by the reversal of opinions which protected it, to be informed that in theory Courts do not make laws, but only construe them. As to such person and the effect upon him, the court has made a law as completely as any legislature ever did. Under the decisions of our court, as the law stood on the 21st day of April, 1899, a man whose residence encroached upon a street, was protected. He owned all the ground on which his home stood. On the 22nd day of April, 1899, his house was a nuisance, liable to be destroyed as such. The legislature is not in session. What has brought about this change? That which was his on the 21st day of April belonged to another on the 22nd day of April. He owned the property on the 21st, but was maintaining a nuisance on the 22nd. It is the action of the court which has made this law. No amount of theorizing or philosophizing can make him, whose property is destroyed, as a result of the decision of the court, understand why it is, or how it is, that the court has not made the law. When property is destroyed because its encroachment made it a nuisance, the owner will have a contempt for the law, for he was informed by the Supreme Court of Appeals seven times, by thirteen appellate judges, all concurring, that his right was perfect. A man might have been tried on the 21st day of April, 1899, for maintaining a nuisance, and he would,

of course, have been acquitted. He might have been tried on the 23rd of April, 1899, for the same offence, and he would have been convicted. Instead of City of Wheeling vs. Campbell, reported in 12 W. Va., we must place in that volume, page 36, the case of Ralston vs. Town of Weston, reported in 46 W. Va., rendered twenty-three years later, after everybody had accepted the first decision and those following it, as fixing and establishing their rights. In Town vs. Ralston, Judge Brannon approves the language of Judge McWhorter, wherein he says: "It is better to be right than to be consistent with the errors of one hundred years." This doctrine would do very well, if one man were infallible and everybody knew, that he alone was infallible, and trusted nobody but him. Who is to decide what is right? Does the Judge mean by this, that every Judge may decide for himself what is or is not right without regard to maxims, rules and precedents? It must be borne in mind that law is not a perfect science. It depends upon precedents, many of which are wrong in reason. Law is not like mathematics. As Sir William Jones well says: "Nothing is law which is not reason, is very excellent in theory, but dangerous in practice." A close, refined and metaphysical examination of the grounds upon which many of our decisions rest, might conclusively show them to be wrong, but who would advocate their reversal for this reason, to make them right, to conform to his individual notion of right. Suppose this court as composed on the 1st of January, 1905, had the time to do so, and would undertake to so change all the decisions in our fifty-four volumes as to make the questions settled by them right in reason; that is right according to their views. Nothing would create more confusion, complication and conflict in the business and property relations of the people,—more unsettle things generally. Before many years the personnel of our Supreme Court would change, and their successors might not be satisfied with the conclusions reached by their predecessors, and hence another change would be necessary. What could be more conducive to instability and uncertainty of principles of law and property rights? These considerations and many others that might be mentioned have led to establishment of the safe, sound and well known rule of stare decisis. Instead of the assertion that it is better to be right than to be consistent with the errors of one hundred years, a much better motto for a Judge, we respectfully submit, would be, that the only way to be right, is to accept that as right which has been prescribed as the law. Where a particular line of decisions has formed a rule of property, although wrong, the only way to be right is to sustain them. Where the errors of one hundred years have been accepted by the people as right, it is wrong to reverse decisions establishing and confirming such errors. In brief, in all matters of this kind the only way to be right is to be consistent. If errors be found, correct them by legislation prospectively, and not by judicial construction, destroy vested rights and throw every thing into inextricable confusion and uncertainty. The policy that it is better to be right than to be consistent with error would abolish the doctrine of stare decisis altogether. Every court would be permitted to take up every decision before it. and in case it finds in them what it regards as error, to set aside and annul all established precedents and invade rules of property, which, in the language of Judge Black, ought to be as "steadfast as the hills." Rules of property would be thus made, in the language of this great judge, "as unstable as the waves." So that, with the greatest deference, in view of the sound and sacred doctrine of "stare decisis," we do not think that the asertion of those judges that it is better to be right than to be consistent, in matters of the administration of justice, is sound in law. The right is what has been settled to be right in matters relating to property interests, whether abstractly so, or not; and it is the sacred duty of the Court to stop examination as soon as it ascertains what has been settled upon the question, as shown by numerous and pointed authorities cited herein. Optima est lex quae minimum relinquit arbitrio judicis; optimus judex qui minimum sibi,—that system of law is best which confides as little as possible to the discretion of the judge; that judge is best who relies as little as possible on his own opinion. "Discretion, when applied to a court of justice, means sound discretion, guided by law. It must be governed by rule, not by humor; it must not be arbitrary, vague and fanciful, but legal and regular." The only way to be right in a legal sense, is to observe uniformity and regularity; is to be consistent. It is said that the new policy established by the Ralston case is the prevailing doctrine in the United States, with the exception of four or five; and that at least thirty states have considered this question, and announced the same law as that stated in Ralston vs. Weston. Even if the Court of Appeals be correct on this proposition, from which we respectfully dissent, it is not material. It must be borne in mind that our Court of Appeals, in seven unanimous decisions, thirteen judges concurring, covering a period of

twenty-two years, consistently supported a policy, which was reversed by the Ralston case. It is believed that the cases in other States holding according to the Ralston case have statutes the very opposite to ours. The law in other states be as is asserted, it is suggested that it has been made so by legislation, and not by judicial construction. For instance, some Virginia cases are cited to support the decision in the Ralston case. The difference between the Virginia and West Virginia is simply this:

The Virginia statute declares, that limitation statute shall not operate against the State. Our statute declares that it shall apply to the State unless otherwise expressly provided. How does a decision under a statute of another State, establishing one policy, apply to our State whose legislature adopted the opposite policy? According to Elliott on Roads and Street the cases are about equal on both sides of the question. In Myer vs. Graham (Neb.) 18 L. R. A., 146, Judge Norval says, that the weight of the adjudications are certainly in harmony with Wheeling vs. Campbell. Judge Norval shows that the courts of a few States hold according to the Ralston case while most of the courts of the other States hold that adverse possession applies to municipal corporations as same as individuals. In Wood on Limitations (3 Ed., a very late work) the author says: "The maxim **nullum tempus occurrit** regi only applies in favor of the sovereign power, and has no application to municipal corporations deriving their powers from the sovereign, although their powers in a limited sense are governmental. Thus the statute runs for or against towns and cities, and also for or against counties, in the same manner as it does for and against individuals. In some of the States the statute is in terms extended to towns, cities and counties; but independent of such provision, the rule is as above stated."

An array of authorities are cited to support the text. It therefore distinctly appears that there is ample ground, for the claim that the seven decisions in West Virginia, reversed by the Ralston case, are in harmony with the weight of authority. But this is not material as before stated. If every country in the civilized world had been holding to the doctrine established by the Ralston case, that fact might have been assigned before the legislature, as a reason for changing the law. It did not justify the Supreme Court of Appeals of this State in changing the law, and thereby invading and destroying rights which had been established and protected by the act of the legislature, as construed by its own decisions, for twenty-two years.

It is said in the Ralston case, that the case of City of Wheeling vs. Campbell is a plain and palpable misapplication of the statute of limitation to the sovereign rights of the people. This strong language affords no satisfaction or remedy to those upon whom the baneful effects of the reversal of a well established rule of property are visited. To say that the man who would enjoy such rights as were secured to him by the seven decisions before mentioned, "is an enemy to the community, fit only for treason, stratagem and spoils,'" affords no remedy to the individual thus complimented, whose property has been lost or ruined on account of this decision.

The Bar of August, 1900, under **STARE DECISIS**, most emphatically disapproves the decision in the Ralston case. On page 161 the editor says: "In the very recent case of Er Ralston vs. The Town of Weston, the court has, by its arbitrary action, overturned a rule of property, established more than twenty years ago, and by a long line of decisions, some of them concurred in by the present members of the court. This decision not only disregards **stare decisis** and confiscates the property of Ralston, but it is against the overwhelming weight of authority elsewhere. This decision is bearing its natural, bitter fruit. Injunction after injunction, has been obtained since its rendition to prevent its baneful effects. The court not only refuses to be bound by the decisions of its predecessors, but it refuses to be bound by the decisions made by themselves."

On page 162 of the same Bar, will be found another editorial devoted to the Ralston case, in which the editor strongly dissents from the position taken by the Supreme Court of Appeals. In conclusion he says: "If the legislature should change the rule announced by the courts, a prospective law could do no harm; but a cancelling of claims under the retroactive effect of a judicial decision must necessarily work hardship."

It is regrettable indeed that the occasion should exist for a solemn declaration by one of the judges of the Supreme Court of this State, speaking for the Court, "No one without divine foreknowledge can foretell what the future conclusions of the Court may be, under change of time, quantity, quality and circumstances."

It is especially unfortunate that he should be able to collect as many as six instances

in recent years to justify this declaration. The declaration and instances given, will be found in Null vs. Elliott, 52 W. Va., page 232.

The enforcement of the decision in the Ralston case would invade almost two hundred lots in the town of Weston, some of which have been held for more than fifty years. It would almost destroy a number of the best business buildings in the town of Weston. It would take two or three feet from the front of the Camden Hotel, which cost perhaps sixty thousand dollars. We are reliably informed, that it would do great injury to the town of Buckhannon. A very reliable and conservative friend from the City of Wheeling tells us that it would take a hundred years to adjust things in that city to the requirement of the decision of the Court in the Ralston case. There has been some litigation and a good deal of trouble in the town of Blackville, Monongalia County, growing out of this decision, but I have been informed lately that it has fortunately subsided. It may be that strict enforcement of the decision would be wise, for in such case it would likely result in a statutory enactment annulling it. After this had been done, it might be well to submit the whole matter to the legislature, thus making change operate prospectively only. We recall the fact, that a most learned, able and conservative lawyer of this State, occupying a judicial office informed us sometime since that in the practice of the law he had advised some friends that they could safely build on a certain strip of ground formerly owned by a municipal corporation, and occupied as a street. His advice was based upon the Campbell case and the six cases following and approving it. The building is now liable to be demolished and the conscientious gentleman who gave the advice is naturally disturbed about it. We are sure that we do not complain of the decisions of our Courts, for we have had little occasion to do so since our Supreme Court of Appeals wisely relieved us from wrangling with a justice over a bill of exceptions. We are convinced that our Judges, Circuit and Appellate have been overworked and underpaid. The figures upon which we insisted were $4,000.00 for the former and $5000.00 for the latter, and we came to Charleston to urge that these salaries be given. However, we have never concealed our emphatic disapproval of what we regard as a strong and increasing tendency to disregard the doctrine of **stare decisis**. What we have said upon this subject is with the greatest deference and respect, and if we have succeeded in increasing an interest in this line our object has been accomplished.

The law of the Medes and Persians is, that no decree nor statute which the King establisheth may be changed. We would have this law to-day, so far as changes of law by the Court is concerned, except in such cases as the one relating to appeals from the judgment of a justice, which we have mentioned, and in which a change may be made which will harm nobody.

Under our system of government the powers delegated by the people belong to three distinct departments—the legislative, the judicial and executive. We would have each keep strictly within its province, and no one transcend its sphere. To our mind a change of a rule of property, by judicial construction, is to all practical intents and purposes, the making of a law, and it is a departure from the judicial branch of the government and a trespass upon the legislative sphere. It will, of course, not be understood that we oppose proper changes of the law. This is an age of development, invention, advancement and progress. We naturally need many changes in the old law, and necessities for new laws frequently present themselves. We must keep abreast of the times, and respond to these demands. Many subjects of legislation present themselves to the wise and public spirited legislator which were unknown in former years. He must give attention to these calls which the enlightenment of the present age imperiously demand. All this, however, belongs to the legislative and not to the judicial branch of the government.

APPENDIX II

INTERNATIONAL ARBITRATION

The Product Of the Modern International System.

ADDRESS BY HON. HANNIS TAYLOR.

Mr. President, ladies and gentlemen. I am here to-night to speak upon a theme that appeals to every heart quickened by that higher and deeper sense of humanity whose widening influence is the most hopeful sign of the age in which we live. In the presence of a death-grapple between two nations, involving a reckless sacrifice of human lives almost unparalleled, jurists, statesmen, and philanthropists are struggling to force the realization of a dream which has been haunting the world for centuries. That dream foreshadows no less than a permanent international tribunal armed with the power to take jurisdiction over every question, or nearly every question, that may disturb the peace of the family of nations, and to enforce its decrees under the authority of treaties conceding the right of compulsory arbitration. Since the founding of the existing international system a series of efforts have been made in that direction with results always discouraging until the growing sense of humanity developed in our time prompted movements which have resulted in actual and practical advances. It does seem as if the time is at hand when the family of nations, armed with an international organization more complete than ever before, is to become strong enough and resolute enough to preserve, through moral means, its own peace and order.

The Medieval Empire As An International Power.

What do I mean when I speak of the family of nations? When did it originate? Where does it abide? What does it embrace? Before the existing state system of Europe was born the separate nationalities composing it, which arose out of the wreck of the empire of Charles the Great, had passed through a long childhood under the protecting wings of an institution that illustrated for centuries the enduring power of a political theory. That institution was known as the Holy Roman or Medieval Empire, which rested upon the magnificent notion of a vast Christian monarchy whose sway was absolutely universal. The chiefs of that comprehensive society were the Roman Emperor and the Roman pontiff—the one standing at its head in its temporal character as an empire, the other standing at its head in its spiritual character as a church. Finally after the Pope established his judicial supremacy over the Emperor, the theory was that all Christian princes, including the Emperor himself, stood to the Roman pontiff as great vassals to a supreme lord or suzerain; and as such suzerain the Pope claimed the right to act as supreme judge in all grave affairs of his vassals, whether national or international. Thus, for conturies, the medieval empire stood forth as the one bond of cohension, holding Europe together under the spell of a theory that assumed to provide a complete system of international justice, and a supreme tribunal adequate for the settlement of all controversies that could possibly arise between Christian nations. No matter whether the medieval empire was a theory or an institution the fact remains that until the splendid conception of a united Christendom it embodied was wrecked in the storm of the Reformation, it did what it could to secure to the world the conditions for which the most advanced advocates of international arbitration are now striving.

Creation Of the Modern International System.

The great earthquake that began in Germany struck at the root of the theory by which the medieval empire had been created and upheld—the theory that all Christendom consisted

of a single body of the faithful held together under the dominion of the Eternal City ruling through her spiritual head the bishop of Rome, and through her temporal head, the emperor. When that ancient and imposing theory was rejected, so far as the Teutonic nations were concerned, it became necessary for them to establish some common superior to whom all could bow without a loss of dignity. Then it was that an epoch-making man stood forth—Hugh Grotius, the founder of the modern system of international law. He became imbued with the dominant idea of his age which was that nature herself is a lawgiver. As such he placed her upon the vacant Imperial throne, and then undertook to interpret her mandates to nations who would admit no other superior. The corner stones of the Grotian system are, first, that each state or nation is sovereign and independent, and as such coequal with all the rest; second, that territory and jurisdiction are co-extensive. Having thus established a common basis of equality, the difficulty that remained was how to subject sovereign states, through their own volition, to the yoke of legality. For centuries the family of nations, thus created, has been striving to solve that knotty problem through concerted action, in diplomatic congresses and conferences, and through treaties and conventions.

The Concert Of Europe.

The first diplomatic congress in which the sovereign states of Europe ever assembled was that which concluded, in 1648, the famous Peace of Westphalia, whereby the conflict that had convulsed Germany for more than a century was definitely closed at the end of the Thirty Years' War, in the two treaties signed at Munster and Osnabruck. In those treaties was embodied a general settlement that survived without a break as the basis of the public law of Europe down to the French Revolution. The underlying motive of that settlement was the creating of such a concert of action between the greater states as would preserve what has since been known as the balance of power. According to the Grotian theory, which the Peace of Westphalia frankly recognized, all states, great and small, are, as territorial sovereigns, co-equal before the law of nations. Within its own territory each is supreme; territory and jurisdiction are co-extensive. And yet, despite those plain provisions of the written code, there has grown up along side of it a set of tacit understandings which have subordinated the legal rights of the theoretically equal European states to a higher law upon whose authority rests the primacy or overlordship vested in the powers that now constitute the Concert of Europe. That primacy or overlordship, gradually developed outside of the written treaty law since the Peace of Westphalia, represents the common superior who actually succeeded to the place made vacant by the collapse of the medieval empire as an international power. With the advent of the eighteenth century the European Concert—made up, in the main, prior to that time, of France, Spain, Austria, Sweden, Holland and England—was widened by the addition of new elements that entirely changed the politics of the world. Such elements were represented by the new empire of Russia, built up in the north by the genius of Peter the Great and Catherine; by the powerful and independent kingdom of Prussia, lifted from a secondary place in the German Empire by the military ambition of Frederick the II; and by the colonial possessions of Great Britain, France, Spain, Portugal and Holland in the continents of America and Asia, and in the eastern and western isles. The famous Peace of Paris, signed in 1763 by the four powers first named, for the purpose of concluding the world-wide contest, made possible by reason of their colonial dominions, marked a transition from a condition of things in which the relative weight of European states had depended entirely upon their possessions within Europe itself. The world had learned already that wars begun within the limits of Europe might have to be fought out upon the banks of the Ganges and the St. Lawrence. Before the American Revolution ended, the Congress of the United States, which under the Articles of Confederation, possessed jurisdiction over all international questions, professed, in the ordinance of December 14, 1781, obedience to the law of nations "according to the general usages of Europe." When the torch thus lighted in the West was passed on to those who kindled the fires of the French Revolution, the Concert of Europe reassembled in order to apply to the internal affairs of France the same principles of intervention which it had so recently applied with deadly effect in the case of Poland. Interference was justified by the declaration that monarchical institutions everywhere were endangered by revolutionary principles that threatened to extend from France to all other countries. To prevent that result the Concert undertook to intervene upon a vast scale, and in the end the intervention was successful. Napoleon was crushed and the throne of

France restored to the House of Bourbon. But before the end came the ancient diplomatic fabric of Europe was shattered. Old landmarks were swept away; many of the smaller states were annihilated and some new ones created. The mighty task of reconstruction thus made necessary was committed to the famous congress that assembled at Vienna in November 1815, the most important diplomatic body that had met since the Peace of Westphalia, a body that relaid the foundations of public law and restored to Europe a period of repose not seriously disturbed for forty years.

The Era Of Humanity.

Before that period of repose ended the morning light of a new era broke upon the world, an era whose Christian spirit of humanity boldly proclaimed its purposes to be, first the prevention, when possible, of all wars through the good offices of international arbitration; second, the greatest possible mitigation of the horrors of war, after the means of conciliation have proven ineffectual. A notable and practicable beginning was made when the plenipotentiaries who concluded the Peace of Paris of 1856 were given to understand that the time had come when the increasing outcry for the introduction of greater humanity into the rules and practices of war could be disregarded no longer. In obedience to that demand the question of the maritime rights of belligerents and neutrals was formally presented to the Congress, and the result was the Declaration of Paris, a protocol signed April 16 by all the parties represented, and subsequently adopted as a part of the public law of the world by all powers except the United States, Spain, and Mexico. The first great step thus taken was soon followed by the epoch-making act of President Lincoln, who, in 1863, requested Prof. Francis Lieber of Columbia University, N. Y., a famous publicist, to undertake the no less novel than human task of codifying the laws of war. The fruit of that effort was promulgated by the War Department in General Order No. 100 for the government of the Armies of the United States in the Field, a military code which has profoundly influenced all subsequent manuals issued for the guidance of their armies by the European states, a code which certainly suggested to the eminent Swiss jurist Bluntschili his codification of the laws of war. But while it is a pleasure to every true American to concede all honor to the immortal Lincoln for this initial attempt to mitigate, in theory at least, the horrors of war, we must not forget the glory due to a great Virginian for the issuance of a famous military order which notably diminished the horrors of war in actual practice. I refer to General Order No. 73 issued by General Robert E. Lee from the Headquarters of the Army of Northern Virginia, at Chambersburg, Pa., June 27, 1863, in which he exhorted his troops to "have in keeping the yet unsullied reputation of the army, and that the duties exacted of us by civilization and Christianity are not less obligatory in the country of the enemy than in our own. The commanding general therefore earnestly exhorts the troops to abstain with most scrupulous care from unnecessary or wanton injury to private property, and he enjoins upon all officers to arrest and bring to summary punishment all who shall in any way offend against the orders on this subject." Even fences and growing crops were protected under that order which for the first time in the world's history declared "that the duties exacted of us by civilization and Christianity are no less obligatory in the country of the enemy than in our own." What an epitaph for a great Christian soldier! In the year that followed President Lincoln's order, whose fruit was the Lieber war-code, met the famous body composed of the representatives of the fourteen states who signed, on August 22, 1864, the Convention of Geneva, regulating the treatment of the sick and wounded, and neutralizing all persons and things employed in their service, such as surgeons, chaplains, nurses, hospitals and ambulances, provided such persons and things are distinguishable by that sacred badge which has now become the proudest device in the heraldry of humanity—the red cross of Geneva. Nothing could be more romantic than the circumstances out of which that great movement grew. It was the work of two citizens of Geneva—Dunant, a physician who published a startling story that thrilled all Europe of what he had seen in the hospitals on the battlefield of Solferino, and Moynier, his friend, who conceived the idea of "neutralizing the sick wagons." Not long ago a lover of his kind left behind him a will in which he provided that out of his estate 100,000 francs should be awarded annually, by a committee, to that one who had done most for the good of humanity. When this committee determined that the name of Dunant, then nearly ninety years of age, should be enscribed among those who had loved best his fellow men, where do you suppose they found him? I am ashamed to tell you. In a poor house near his native city of Geneva!

In order to revise and extend the original provisions of the convention of 1864 another was signed at Geneva in 1868, but never ratified, whose Additional Articles, including the neutralization of hospital ships, relate chiefly, though not exclusively, to warfare at sea. Less than two months thereafter a Military Commission at St. Petersburg, composed of delegates from seventeen states, including representatives from Persia and Turkey, agreed as between themselves "to renounce the employment of any projectile, on land or seas of a weight below four hundred grammes (fourteen ounces), which should be explosible or loaded with fulminating or inflammable materials." In the declaration then made it was said that the object of the use of weapons in war is "to disable the greatest possible number of men, that this object would be exceeded by the employment of arms which needlessly aggravate the sufferings of disabled men, or render their death inevitable, and that the employment of such arms would therefore be contrary to the laws of humanity. In 1874 met the Conference of Brussels, in which appeared the representatives of all the European powers of any importance, in the hope of bringing about the adoption by all civilized states of a common code for the regulation of warfare on land. As the delegates were not plenipotentiaries, the Conference was purely consultative; and the outcome was a series of articles embodied in a Declaration which remained as the basis for further negotiations between the governments concerned. In 1877 met the Conference of Constantinople which vainly endeavored to obtain from the Port guarantees for the better government of its Christian subjects; in 1884-85, the West African Conference of Berlin, whose purpose was to regulate the affairs of that region, including the boundaries and independence of the Congo Free State; and in 1890, the Conference of Brussels, which resulted in the Final Act for the suppression of the African slave trade.

Peace Conference At the Hague, 1899.

Such were the path-breaking efforts which cleared the way for the meeting of the great peace Conference that assembled at The Hague on the 18th of May, 1899, the year after the death of the mighty Bismark whose warlike policy through which France was humiliated and Germany consolidated, had converted the Continent of Europe into a military camp, in which each nation was vying with the other to build up vast armies and navies as an intolerable burden to all. In the hope of relieving that condition of things the Czar of Russia issued an invitation which was answered by a hundred delegates from twenty-six powers—twenty European, four Asiatic, and two American. At a very early stage in the proceedings of an assembly called by the chief of the great empire of the east of Europe, the first plenipotentiary of the great empire of the west, Sir Julian Pauncefote, formally proposed, in a remarkable memoire, the question of the creation of a permanent tribunal of arbitration. The delegates of the United States submitted at the same time a similar proposition, expressing the desire that arbitration might become a nominal method of adjusting international controversies. While the delegates of the German Empire objected, and no doubt wisely at that time, to obligatory arbitration as a step too far in advance of existing conditions, they subsequently expressed the cordial adherence of Germany to a voluntary international court, Prof. Zorn declaring that his government "fully recognized the importance and grandeur of the new institution." In the original scheme submitted by Russia at The Hague, it was proposed that, "Arbitration shall be obligatory in the following cases, so far as they do not effect vital interests or the national honor of the contracting states." In that catagory were included differences regarding pecuniary damages suffered by a state or its citizens; and the interpretation or application of treaties upon certain designated subjects. But, after objection had been made to a part of the Russian scheme by the delegates of the United States, it was rejected as a whole upon a motion made by a delegate of the German Empire. Thus the battle at The Hague in favor of compulsory arbitration was wholly lost; there was an unwillingness to concede it even when limited to the settlement of rights purely legal, as contra distinguished from such as are purely political. The first battle in favor of compulsory arbitration within those limits was destined to be won upon the soil of the New World.

The Pan American Conference Of 1901-2.

No invitations to attend the Peace Conference of The Hague were sent to the Holy See or to the South African Republics. The Czar's invitations were limited to those countries having diplomatic representatives at St. Petersburg. And so no delegates came from the

Central and South American Republics. The only American Powers present were the United States of America and Mexico. And yet when President McKinley, in his message to Congress in 1899, declared it expedient that the several American Republics, constituting the International Union, should hold another conference, they promptly assembled in the City of Mexico in October, 1901, not only to approve of what had been done at The Hague, and secure admission into its conventions as signatory powers, but to take a step in advance of its proceedings respecting arbitration. Russia's limited proposal which failed at The Hague was revived in substance in the Second Pan-American Conference in the following form: "It is now proposed to submit such cases to The Hague tribunal in accordance with the tendencies of which this assembly has given such unanimous evidence." Under the terms of Article 1, it is provided that: "The high contracting parties agree to submit to arbitration all claims for pecuniary loss or damage, which may be presented by their respective citizens and which, in accordance with international law, can be submitted through diplomatic channels and can not amicably be adjusted through such channels, provided such claims exceed the sum of ten thousand dollars in gold; and provided, further, that such claimants shall not have voluntarily served or aided, subsequently to the ratification of this protocol, the enemies of the government against which the claim is presented." Such was the unanimous agreement assented to by the Representatives of the United States of America, of the United States of Brazil, of the United States of Mexico, of the United States of Venezuela, and of the republics of Argentine, Bolivia, Chile, Colombia, Costa Rica, Equador, Guatemala, Hayti, Paraguay, Peru, Salvador, and Uruguay. At the close of the Conference the Mexican Minister for Foreign Affairs declared that it had ended in triumph. To employ his own words: "That triumph is undoubtedly the unanimous agreement of all the delegates, in spite of their apparent radical divergence as to the application of that great principle, to submit for settlement to the permanent arbitration court of The Hague all controversies that may arise among the governments of America due to the claims of private individuals for indemnities and damages. As those claims, at least in America, and in cases where powerful nations are involved, are without question the most frequent source of international controversies, the importance of this achievement can not be doubted." Although little progress has been made towards the ratification of these arbitration treaties signed at the Pan-American conference, the fact remains that they were unanimously approved by the delegates. But what is more to the point the first treaty of obligatory arbitration actually concluded was made in 1902 between two of the South American republics, Chile and the Argentine who, after disbanding their armies and reducing their navies by a sale of a number of their battleships, crowned the noble work of erecting on the highest peak of the Andes which marks their international boundary, long a subject of angry controversy, a statue of the Christ, the Prince of Peace.

Anglo-French Treaty Of 1903 As a Standard for Imitation.

The most signal support, however, which The Hague Court has so far received has been drawn, during the last year and a half, from the treaties of obligatory arbitration signed by Great Britain and France, France and Italy, Great Britain and Italy, Holland and Denmark, Great Britain and Spain, France and Spain, and France and Holland, entered into under Article XIX of The Hague Arbitration Convention which provided that any of the Signatory Powers may make "New agreements, general or special, with a view of extending the obligation to submit controversies to arbitration, to all cases which they consider suitable for such submission." Most notable is the fact that the treaty between Holland and Denmark is without limitations. Article 1 boldly provides that "The Hague Contracting Powers undertake to submit to the Permanent Court of Arbitration all mutual differences and disputes that cannot be solved by means of a diplomatic channel." The other treaties reserve questions of vital interest and honor, whatever they may be. On that basis was made the treaty between Great Britain and France on the 14th of October, 1903, after one of the most remarkable campaigns in the history of social progress. After a canvass conducted by Dr. Thomas Barclay and others, before all the important Boards of Trade and Chambers of Commerce in both countries nearly three hundred of them voted resolutions in favor, of the treaty. The American Conference of International Arbitration is now appealing to the people of the United States in support of the treaties of arbitration being negotiated by this Government with France, Germany, Great Britain, Mexico, and various other powers. While the terms of these treaties have not yet been made public, it is authoritatively stated that they are substantially the same as the arbitration treaty of 1903 between Great Britain and France.

Special Duty Of the United States To Aid the Movement.

I can not doubt that it is the paramount duty of the people of the United States to give to this movement in favor of limited compulsory arbitration, now at a critical stage, the entire weight of their moral influence. That something we call destiny was not acting blindly when it planted this great Republic here in isolation, midway between Europe and Asia, so that it might become the most independent and therefore the most potential arbitrating power in the world. The high place to which we have now attained, from small beginnings, has been reached through two stages of growth. When we signed the treaty of peace of 1783 with Great Britain our position in the world was hopeful but not commanding. Our rise did not really begin until the wisest and strongest American expansionist, casting aside the weakest of all constitutional quibbles, added Louisana to our domain thereby securing the ultimate control of this continent and freedom from complications with European powers. If that step had not been taken we would have been in no position to defy the Holy Alliance when, in 1822-3, it resolved to dispute our primacy in the New World. For the second time the great Virginia expansionist came forth, and from his library at Monticello he sent out a definition of our new position in the family of nations, and that definition was labeled with the name of Mr. Monroe. Virginia more than any other commonwealth is responsible for our present place in the world. Mr. Jefferson did more than all other men combined to establish the supremacy of this republic in the affairs of this hemisphere. Andrew Johnson and Mr. Seward did something when at the end of our civil war they invited France to retire hurriedly from the soil of Mexico. A great democratic President Grover Cleveland, did far more when he notified the greatest of world powers, in the affair at Venezuela, that the arbitrating power of the United States in this hemisphere is absolute and irrevocable. When Great Britain, in a just and wise spirit accepted that conclusion the foundations were laid for that stronger and better understanding which now, thank God, unites the two great branches of the English speaking people in a moral alliance for the good of humanity. The results of the Spanish American war have extended our influence beyond the affairs of this hemisphere, they have brought to us invaluable possessions in the eastern and the western isles. In order to defend those possessions it is absolutely necessary to have an interoceanic canal not far removed from the ports of New Orleans and Mobile. The fact that that great enterprise will do more than anything else to increase the commercial importance of our Southern cities upon the Gulf of Mexico fills me neither with regret nor consternation. I believe that the South is still a part of this Union and that it is not only our right but our duty to exercise an influence in national affairs. The new President of the University of Virginia wisely said the other day at a banquet in New York that the South should revive the national spirit. I am glad that this meeting is taking place here tonight on a part of what was once the soil of the ancient Southern commonwealth which really gave birth to the national spirit. It was at the bugle call of Virginia that the states assembled in order to make the present constitution of the United States; it was at the bugle call of the Sage of Monticello that our then infant republic resolved to assume the primacy in this hemisphere. From that place we have advanced to a position of commanding influence in the family of nations. Let us make no mistake; let us indulge in no self deception. This aggressive and rapidly growing nationality is neither cowardly nor incompetent. It does not propose to retreat; it does not propose to shrink from the discharge of any of the high duties that destiny has put upon us. In the great drama of the future the South must play her part. And here let us remember one thing so clearly illustrated by the politics of the British Empire. In the conduct of our foreign affairs, let us hush our local differences, and stand shoulder to shoulder when we are called upon to deal with foreign nations. To that extent at least, let us resolve to be non-partizan, and non-sectional. When a great Secretary of State, like the Hon. John Hay, wise, patriotic, tolerant, just to all men, is pressing forward some great measure like this for the common good of all mankind, let us not stop to inquire whether he is a democratic or a republican. Let it suffice for us to know that he is an American.

APPENDIX III.

REPORT OF COMMITTEE ON LEGAL BIOGRAPHY.

Richard E. Fast.

Your Committee, through its Chairman, endeavored to obtain, by letter to a friend of the late Richard E. Fast, of Morgantown, some correct sketch of his life and character, and regrets to say that that letter remains unanswered. "How we all perish and fade away."

Taking advantage of the best information obtainable, your Committee can report that Richard E. Fast gained for himself great distinction for one so young.

Three times in succession in early manhood, he was elected Mayor of Morgantown. He afterwards became and served his people well as Clerk of the Circuit Court.

In 1890, he was a candidate for election on the Republican ticket, and he took a high place as a member of the Senate of West Virginia, and was respected and admired by his compeers, who often followed his leadership.

In youth, he was the devoted son of a loving mother, who reared him well and educated him as her means afforded. He was a diligent student, and became a teacher at the age of 17 years in the public schools.

In 1886, he graduated from the Law School of the University of West Virginia, and received the degree of Bachelor of Laws.

For a while he was one of the Commissioners in Chancery of Monongalia County, and distinguished himself in that capacity, by fairness, accuracy and systematic arrangement of his work.

His wife was Miss Elizabeth Stewart, who died before him.

He was a man ambitious to rise and to hold the esteem and confidence of his fellows, a man of high ideals of life, a man of fine character and great decision of purpose.

He died at Los Angeles, California far away from his home and friends, loved, respected, honored.

We pay this feeble tribute to his memory:

"Daughter of Faith! Awake, arise illume,
The dread unknown, the chaos of the tomb."

The Chairman of this Committee thinks that he should say, that he addressed personal letters to each of the other members of the Committee, requesting them to furnish him with such information as they could with reference to the life and character of any member of this Association, who may have died during the last year He regrets to say that neither one of these letters was replied to.

W. J. W. Cowden.

"To know, to esteem, to love—and then to part,
Makes up life's tale to many a feeling heart."

Thus may we speak of our brother, Major W. J. W. Cowden, of Wheeling, W. Va., who departed this life July 20th, 1904.

Major Cowden was born May 1st, 1846, in Lawrence County, Pennsylvania, the son of Isaac P. Cowden, a prominent farmer and merchant of that community. While yet under seventeen years of age he enlisted in a Lawrence County Pennsylvania Company and for one year was engaged in guard duty. Subsequently he entered Westminster College, New Wilmington, Pa., and was graduated from there in June, 1871, with the degree of A. M. In the following September he came to Wheeling, W. Va., and took up the study of law in the offices of Hon. W. P. Hubbard, and in October, 1872, was regularly admitted to the bar. He at once began the practice of his chosen profession in Wheeling, W. Va., and from the beginning has been counted among the leading practitioners in the Courts of this State.

Early in his practice he began to take an active interest in State politics and for many years occupied the position of Secretary and Chairman, respectively, of the State Republican Campaign Committee, the work of which he carried forward with great energy and success. He held an appointment on the Staff of Governor G. W. Atkinson, He was made additional

paymaster to the volunteer army during the Spanish-American war with the rank of Major. In 1889 he was appointed Postmaster of Wheeling, W. Va., under the administration of Postmaster General Wannamaker, which position he filled with marked fidelity and fitness until January 1st, 1894.

He always manifested a deep interest in educational matters. Prior to his graduation he taught the classics and higher mathematics in several academies. For many years prior to his death he was a member of the Board of Trustees of the United Presbyterian Theological Seminary, Allegheny, Pa. In 1901 was made President of the Board of Regents of our State University. The exactions of this latter position proved only a stimulus to that natural longing he had for large and progressive educational developments in our State. He was a faithful and devoted member and ruling elder in the First United Presbyterian Church of Wheeling, W. Va. In his home life pre-eminent for his home loving qualities. He is survived by his wife, who is the daughter of the late Rev. J. T. McClure, D. D., and a daughter Miss Helen McClure Cowden. A devoted husband; a loving father; a courteous, genial gentleman; patient in affliction; forbearing under provocations; of keen and analytical bent of mind; zealous and faithful to his clients, cause; fair in his intercourse with the Courts and his associates; he merited the confidence of all with whom he came in contact. With some of us the loss is not only that of a brother lawyer and an honorable public servant, but also of a warm and steadfast friend.

William B. McGary.

William B. McGary, late of the county of Lewis, a member of this Association, passed away from life at the hospital in the city of Fairmont, at about the age of fifty years. An operation had there been performed upon him from which he never revived, and was never restored to consciousness.

Mr. McGary was born and reared near Weston, at which place he so actively and successfully practiced his chosen profession.

He was educated at the schools in Weston and at the West Virginia University. He taught school for a few years, and soon became a practicing lawyer, and rapidly rose in the practice of his profession in his native and neighboring counties until he became a leader among his fellows in the State.

He served the people of his county for two terms as prosecuting attorney of that county, and was afterwards appointed to fill a vacancy in that office caused by the death of G. M. Chidester.

Well and faithfully did he administer the duties of that important position during his whole administration of that office.

He married Miss Alice Whelan, a daughter of Mr. and Mrs. A. F. Whelan. That was indeed a happy union.

Mr. McGary was a man, generous, high-minded, unselfish and noble. Of him it can be truly said, that "his hand was open as the day, and his heart was a great temple where thronged all the kindly emotions." His career was replete with energy and activity, and he held a high place both at the bar and among the people.

The members of the Weston bar paid a high tribute to his memory, by resolutions adopted by them and recorded upon the records of the court, among which they said of him, that he was "a generous, high-minded, unselfish, lovable man, and that uniform kindness and politeness marked his whole professional career," and that he was "called from his labors while in the zenith of his powers and acme of public confidence."

One who knew him well said of him, "the Angel of Death, whose wings have shadowed us before, never summoned to its last account a truer, more knightly or more lovable spirit than that of our departed friend, William McGary."

His sudden passing away produced most profound feelings of sorrow and regret, not only among those with whom he lived and labored so well, but among his brethren at large throughout the entire State.

"The hand of the reaper
Takes the ears that are hoary,
But the voices of the weeper
Wails manhood in glory.

"The autumn winds rushing
Waft the leaves that are searest,
But our flower was in flushing,
When blighting was nearest."

W. H. H. Flick.

Another bright star faded from the galaxy of West Virginia's foremost men and lawyers at Martinsburg on the 4th. day of June, 1904, for Wm. H. H. Flick then died. His end came peacefully, and that giant intellect, which made him a man of great power in the prime and vigor of manhood, gently passed into the unknown. He entered upon his last sleep, secure in the esteem and affection of all who knew him.

Mr. Flick graduated at Hiram College Ohio, and at the breaking out of the war, volunteered in the Union Army, and was severely wounded at the battle of Shiloh in April, 1862.

He afterwards taught school, earning means enough to enter the Ohio Law School, from which he graduated with distinction.

In 1865, he married Lucretia Clark, of Ohio, and removed to West Virginia, first locating in Moorefield, but in 1867, he went to Pendleton County. He represented that County in the Legislature for two sessions, taking there such a leading part, that his fame soon extended throughout the State.

He was the author of that Amendment to the Constitution, called by his name, which enfranchised and restored to citizenship the soldiers of the South, who looked to him as their truest friend in the dark hours of re-construction.

He served as Prosecuting Attorney for both Pendleton and Grant Counties. He went to Martinsburg in 1875, and soon took a leading position at the Bar there. He faithfully served as Prosecuting Attorney of Berkeley County and as District Attorney of the United States for the District of West Virginia. In the latter position, he gained great distinction, by his succesful prosecution of a noted gang of counterfeiters, which included a member of the Legislature, as well as in the Sioto-Lomas Steamboat Collision case, and other cases of great public interest and importance.

He became the candidate of the Republican party for Judge of the Court of Appeals of the State, and as such, ran ahead of his ticket.

He was a candidate for Congress, and came within a few votes of carrying his district against that pure, renowned man, Wm. L. Wilson. He was a free Mason of high standing, and like Boaz of old was a pillar of strength to that Association.

The writer knew him well, and many a time felt the power of his intellect, learning and eloquence, in the trial of cases, and has often said that he thought W. H. H. Flick was one of the strongest opponents he ever met before a jury. Thrown so intimately together, we knew each other, not only as lawyers, but as men strongly bound to each other by sacred ties of sincerest friendship. Mr. Flick was a big hearted, broad minded man, of splendid intelleet, strong character, strictest integrity, and the highest sense of honor. He was, indeed, a manly man, who made his mark among men.

No words can express the loss sustained by both Bar and State by the passing away of such a man.

That giant intellect stilled, that eloquent voice hushed, that wise counsellor and able lawyer gone from us forever.

"We mortals scarcely think that we can die
And idly dream ourselves immortal.
Ah! What are honor, glory, fame,
But Death's dark watchword to the grave!
The mortal dies, and lo! his name
Is lost in Life's swift rolling wave."

"How true it is! That we we all are passing away to the mighty Past Where our countless Brethren sleep."

Samuel L. Flournoy.

Samuel L. Flournoy's life passed away in the Southland, under the sunny skies of Florida. He died at Orlando on the 28th day of January, 1904, whither he had gone, hoping that the climate would prove beneficial, but there "Death with his sythe, that gleams like lightning," cut off his days.

Mr. Flournoy was directly descended from the Huguenots, those noble refugees from persecution in France, who did so much to impart elegance of manners and high morality, and develop splendid manhood among the settlers of early Virginia.

He was a son of one of Virginia's old time lawyers, and was born in Chesterfield County, near Richmond, on the 25th. day of November, 1846. When but a boy of about 17 years, he left college, Hampden Sydney, and, with his brothers, joined the Otey Battery, which did such heroic service with Lee, in the army of Northern Virginia. When the war was over he returned to the College, and graduated in 1868, receiving the speaker's medal.

Soon after leaving College, he went to Romney, as a teacher in a classical school, and there studied his well chosen profession with Col. Robert White, and was admitted to the Bar in 1873. He married Frances White a sister of Col. White, and became his partner, and upon his removal to Wheeling, succeeded to his business, and there achieved success at the Bar, and was regarded as a leader of the people.

He was twice, in 1885 and 1889, elected to the State Senate, and in that body became, not only prominent, but a leader. His cultivated mind and manly ways, his learning as a lawyer, his gentle, genial manners and his honesty of purpose, made for him friends everywhere, and the qualities mentioned, together with his native ability, soon brought him to the forefront, both in the Senate and the State.

Upon the expiration of his term in the Senate he, with his friend, Hon. George E. Price, who served with him in that body, determined to remove to Charleston and there together engage in the practice of the law. All men know of the success of that firm at the Capital of the State.

One who knew him well paid this just tribute to his memory:

"The law of kindness was in his heart, and he never unnecessarily wounded the feelings of any fellow being. He was just and upright. His mind was highly cultivated, well stored with knowledge, accurate and valuable."

As a lawyer "he possessed in an eminent degree that power of analysis, quickness of perception, and that equipoise of judgment and knowledge of the law which most befit" a man of the profession.

As an advocate, he was clear, strong, persuading and convincing.

As a husband and father, he was loving and true, upon him his family leaned, to him they loked up, in him they trusted, and he loved them with a tenderness unspeakable.

His attachments were strong, his friendship true and abiding.

In his passing away the Bar of the State lost one of its brightest ornaments.

"A gem whose brilliant glow is shed
Beyond life's swelling wave,
And guilds the memory of the dead
And pours its radiance o'er the grave."

In matters of religious faith he was a Presbyterian; and an officer in that church, both at Romney and Charleston, loved and honored. Seldom, if ever, were more touching tributes made, and homage paid to the memory of a citizen, than upon the occasion of his funeral.

Ah! Was it not then well said that "we think of him as one that the Psalmist had in mind, when he wrote:"

"Who shall ascend into the hill of the Lord, or who shall stand in his holy place. He that hath clean hands and a pure heart, who hath not lifted up his soul unto vanity nor sworn deceitfully. He shall receive the blessing from the Lord and righteousness from the God of his salvation."

CONSTITUTION AND BY-LAWS.

Constitution.

1. The Association shall be known as "The West Virginia Bar Association."

Object.

2. The Association is formed to advance the science of jurisprudence; to promote reform in the law; to facilitate the administration of justice; to uphold integrity, honor and courtesy in the legal profession; to encourage liberal education, and to cultivate cordial intercourse among the members of the bar.

Membership.

3. The members of the legal profession attending this convention this 8th day of July, 1886, are hereby declared to be members of this Association, provided they shall, during this present session, pay the admission fee hereinafter mentioned.

Any member of the legal profession in West Virginia, of good standing, residing therein, may become a member of the Association upon nomination and vote, as hereinafter provided.

Election Of Members.

4. All nominations for membership shall be made by the Committee on Admissions, and must be transmitted in writing to the President and by him reported to the Association, and the Association shall thereupon vote by ballot. Several nominees may be voted for upon the same ballot, and in such case, placing the word "no" against any name or names upon the ticket, shall be deemed a negative vote against such name or names, and against those only. One negative vote in every five shall suffice to defeat an election. No member of the bar residing in a county where there is a local Bar Association shall become a member of this Association unless he shall be a member of such local Association.

Officers.

5. The officers of the Association shall be a President, who shall be ineligible to re-election on the expiration of his term; one Vice-President from each Congressional district represented by membership in the Association; a Secretary and Treasurer. All of these shall be elected at the annual meeting and hold their offices until the next annual meeting of the Association and until their successors are elected. A majority of votes shall be necessary to the election of officers, including the election of the Executive Council. Such election shall be by ballot.

Committees.

6. At the annual meetings the Association shall elect an Executive Council to be composed of five members and the President and Secretary.

The President-elect shall, with the approval of the newly elected Executive Council, appoint the following standing committees, to-wit:

A Committee on Admissions.

A Committee on Judicial Administration and Legal Reform.

A Committee on Legal Education.

A Committee on Grievances.

A Committee on Legal Biography.

A Committee on Banquet.

A majority of the members of every committee, including the Executive Council, who may be present at a meeting of the Association or at a meeting of such committee held in accordance with By-law No. 8, shall constitute a quorum of such committee.

Final Action.

7. No action of this Association of a permanent nature or recommending changes in law or the administration of justice, shall be had until the subject-matter thereof shall have been reported upon by the appropriate committee to which the same shall have been

referred, unless this regulation shall be suspended by a two-thirds vote of the members voting thereon.

President.

8. The President, or in his absence the Vice-President, senior in years, shall preside at all meetings of the Association, and the President shall deliver an address at the opening of the annual meeting after his election, which address shall discuss matters of special interest to the people of this State, arising upon legislation enacted and decisions rendered.

The Executive Council.

9. This Council shall manage the affairs of the Association, subject to the provisions of the constitution and by laws, and shall be vested with the title to all its property, as trustees thereof, and shall make by-laws for the Association, subject to amendment by the Association.

Committee On Admissions.

10. The proceedings of this committee shall be deemed confidential and shall be kept secret, except so far as written reports of the committee shall be necessarily and officially made to the Association.

Committee On Judicial Administration and Legal Reform.

11. It shall be the duty of the Committee on Judicial Administration and Legal Reform to take notice of all proposed changes in the law, and to recommend such as may be in their opinion entitled to the favorable influence of the Association; and, further, to observe the working of the judicial system of the State, to collect information with reference thereto, and to recommend such action as they may deem advisable.

Committee On Legal Education.

12. It shall be the duty of the Committee on Legal Education to examine and report upon any proposed changes in the system of legal education and of admission to the practice of the profession in the state of West Virginia.

Committee On Grievances.

13. The Committee on Grievances shall receive all complaints which may be made in matters affecting the interests of the legal profession, the practice of the law and administration of justice, and report the same to the Association with such recommendations as they may deem advisable.

The proceedings of this committee shall be deemed confidential and kept secret, except so far as reports of the same shall be necessarily and officially made to the Association.

Committee On Legal Biography.

14. The Committee on Legal Biography shall provide for the preservation among the archives of this Association of suitable written or printed memorials of the lives and characters of the deceased members of the West Virginia Bar.

Secretary.

15. The Secretary shall keep a record and conduct the correspondence of the Association and perform the usual duties of such office.

Treasurer.

16. The Treasurer shall collect, and by order of the Executive Council disburse, all funds of the Association, and keep regular accounts, which at all times shall be open to the inspection of any member or members of the Executive Council.

Annual Meeting.

17. This Association shall meet annually at Parkersburg or such other place and at such time as shall be fixed at each session of the Association. Those present at such a meeting shall constitute a quorum.

Dues.

18. The fee for admission to membership shall be $5, which shall in all cases accompany the application for membership. The annual dues shall be $4, the payment of which shall entitle each member to receive one copy of the journal and all the regular publications free of charge. The Treasurer shall annually set apart and pay over to the Executive Council one-fourth of the sum collected as annual dues, which shall be used as a fund for paying the expenses of publishing the journal of the Association.

Amendments.

19. This constitution may be altered or amended at any annual meeting, on the recommendation of the Executive Council, by a vote of the majority of the members present, or without such recommendation by a vote of two-thirds of the members present.

Expulsion.

20. Any member may be expelled by a majority of this Association at any annual meeting.

Resignations.

21. Any member may resign at any time upon the payment of all dues for the current year in which the resignation is tendered; provided, there be no charges for misconduct against such member.

From the date of the receipt by the Secretary of a notice of resignation, with an endorsement thereon by the Treasurer that all dues have been paid, as above provided, the person giving such notice shall cease to be a member of the Association.

22. Any member of this Association who has for two successive years failed to pay his annual dues having due notice thereof, shall be dropped from the roll of membership by the Treasurer, and if at the end of one year thereafter he shall still be in default for dues, his membership shall thereby be forfeited; but if he shall within such year pay all his dues, such payment shall restore him to membership. The Treasurer shall report his action under this article to each annual meeting of the Association.

23. As early as practicable on the first day of the annual meeting, the President shall appoint a special committee on nominations, consisting of five members, which committee shall promptly meet, receive all nominations which may be offered for any office, for membership in the Executive Council, or for election as delegate to the American Bar Association, and shall report to the Association, not later than the afternoon of the first day, all such nominations, with any others which they may see fit to present.

By-Laws.

1. The Executive Council, at its first meeting after each annual meeting of the Association, shall select some person to make an address at the next annual meeting, on the life and service of any deceased members of the bench or bar of West Virginia of eminince, or other subjects; and also not exceeding five members of the Association to read papers.

2. The order of business at the annual meeting, unless otherwise provided by the Executive Council or the Association, shall be as follows:

a. Annual Address of the President;
b. Report of Committee on Admissions;
c. Election of members;
d. Appointment of Committee on Nominations;
e. Report of the Secretary;
f. Report of the Treasurer;
g. Report of the Executive Council;
h. Report of the Committee on Nominations;
i. Election of officers, members of Executive Council and delegates to the American Bar Association.
j. Selection of time and place of the next annual meeting;
k. Report of Committee on Judicial Administration and Legal Reform.
l. Report of Committee on Grievances;
m. Report of Committee on Legal Education;
n. Report of Committee on Legal Biography;
o. Report of Committee on Banquet;
p. Report of special committees, and at the same time a meeting of the newly elected Executive Council;
q. Miscellaneous business;
r. Appointment of standing committees.

The address to be delivered by a person invited by the Executive Council shall be at the evening session of the first day of the annual meeting, unless the Executive Council shall otherwise provide. After the reading of the President's address and of each paper, an opportunity for discussion shall be given.

The Executive Council shall publish in the journal at least two weeks in advance of each annual meeting a statement of the name of the person who is to deliver the annual address and the names of those who are to read and the subjects of each.

3. No person taking part in a discussion shall speak more than ten minutes at a time nor more than twice on one subject.

A stenographer shall be employed at each annual meeting.

4. At any of the meetings of the Association, members of the bar of any foreign country or of any state other than West Virginia, who are not members of the Association, may be admitted to the privilege of the floor during such meeting.

5. All papers read before the Association shall be lodged with the Secretary. The annual address of the President, the report of committees and all proceedings of the annual meetings shall be printed; but no other address made or papers read or presented shall be printed, except by order of the Executive Council. Extra copies of reports, addresses, and papers read before the Association may be printed for the use of their authors, not exceeding one hundred to each of such authors. The Executive Council, as a committee on publication, shall meet within one month after each annual meeting, at such time and place as the chairman shall appoint.

6. Except as provided by Article 6 of the Constitution or by vote of the Association, the term of office of all officers and of the Executive Council shall begin at the adjournment of the annual meeting at which they were elected; but the term of office of the members of the several committees appointed by the President shall begin immediately upon their appointment.

7. Each committee shall elect its officers, whose term of office shall commence on their election and continue until the appointment of a new committee; and each standing committee shall continue until its successor shall be appointed.

8. All standing committees shall meet on the day preceding each annual meeting at the place where the same is to be held, at such hour as the respective chairmen shall designate.

9. Special meetings of any committee shall be held at such times and places as the chairman thereof may appoint. Reasonable notice shall be given by him to each member by mail.

10. The Treasurer's report shall be examined and audited annually.

11. No resolution complimentary to an officer or member for any service performed, paper read or address delivered shall be considered by the Association.

12. Any charges of unprofessional conduct against any member of the Association, if made in writing and signed by the person preferring them shall be investigated by the Committee on Grievances, who shall recommend to the Association such action as they may deem proper, but no action shall be taken by said committee or this Association without due notice to and the service of the charges upon the accused.

CODE OF ETHICS

ADOPTED BY THE WEST VIRGINIA BAR ASSOCIATION, FEBRUARY 12, 1902.

The purity and efficiency of judicial administration, which under our system is largely governmental itself, depends as much upon the character, conduct and demeanor of attorneys in their great trust, as upon the fidelity and learning of courts, or the honesty and intelligence of juries.

"There is perhaps no profession after that of the sacred ministry,, in which a high-toned morality is more imperatively necessary than that of the law. There is certainly, without any exception, no profession in which so many temptations beset the path to swerve from the lines of strict integrity, in which so many difficult questions of duty are constantly arising. There are pit-falls and man-traps at every step, and the mere youth at the very outset of his career needs often the prudence of self-denial as well as the moral courage which belong commonly to riper years. High moral principle is his only safe guide; the only torch to light his way amidst darkness and obstruction."—Sharswood.

No rule will determine an attorney's duty in the varying phases of every case. What is right and proper must, in the absence of statutory rules and an authoritative code, be ascertained in view of the peculiar facts, in the light of conscience, and the conduct of honorable and distinguished attorneys in similar cases, and by the analogy to the duties enjoined by statute and the rules of good neighborhood.

The following General Rules are adopted by the Bar Association of the State of West Virginia for the guidance of its members:

Duty Of Attorneys To Court and Judicial Officers.

1. The respect enjoined by law for courts and judicial officers is exacted for the sake of the office and not for the individual who administers it. Bad opinion of the incumbent, however well founded, cannot excuse the withholding of the respect due to the office while administering its functions.

2. The properties of the judicial station, in a great measure, disable the judge from defending himself against strictures upon his official conduct. For this reason, and because such criticisms tend to impair public confidence in the administration of justice, attorneys should, as a rule, refrain from published criticism of judicial conduct, especially in reference to causes in which they have been of counsel, otherwise than in courts of review, or when the conduct of the judge is necessarily involved in determining his removal from or continuance in office.

3. Marked attention and unusual hospitality to a judge, when the relations of the parties are such that they would not otherwise be extended, subject both judge and attorney to misconstruction, and should be sedulously avoided. A self-respecting independence in the discharge of the attorney's duties, which at the same time does not withhold the courtesy and respect due to the judge's station, is the only just foundation for cordial, personal and official relations between Bench and Bar. All attempts by means beyond these to gain special personal consideration and favor of a judge are disreputable.

4. Courts and judicial officers, in the rightful exercise of their functions, should always receive the support and countenance of attorneys against unjust criticism and popular clamor; and it is an attorney's duty to give them his moral support in all proper ways, and particularly by setting a good example in his own person of obedience to law.

5. The utmost candor and fairness should characterize the dealings of attorneys with the courts and with each other. Knowingly citing as authority an overruled case, or reading a repealed statute as in existence; knowingly mis-stating the contents of a paper, the testimony of a witness, or the language or arguments of the opposite counsel; offering evidence which it is known the court must reject is illegal, to get it before the jury under the guise of arguing its admissibility, and all kindred practices, are deceits and evasions unworthy of attorneys.

Purposely concealing or withholding in the opening arguments positions intended finally to be relied on, in order that the opposite counsel may not discuss them, is unprofessional.

In the argument of demeurrers, admission of evidence, and other questions of law, counsel should carefully refrain from "side bar" remarks and sparring discourse to influence the jury or bystanders. Personal colloquies between counsel tend to delay and promote unseemly wrangling, and ought to be discouraged.

6. Attorneys owe it to the courts and the public whose business the courts transact, as well as to their own clients; to be punctual in attendance on their causes; and whenever an attorney is late he should apologize or explain his absence.

7. One side must always lose the cause, and it is not wise or respectful to the court for attorneys to display temper because of an adverse ruling.

Duties Of Attorneys To Each Other, To Clients and To the Public.

8. An attorney should strive at all times to uphold the honor, maintain thed ignity and promote the usefulness of the profession, for it is so interwoven with the administration of justice that whatever redounds to the good of one advances the other, and the attorney thus discharges, not merely an obligation to his brothers, but a high duty to the State and his fellow-man.

9. An attorney should not speak slightly or disparagingly of his profession, or pander in any way to the popular prejudices against it; and he should scrupulously refrain at all times and in all relations of life, from availing himself of any prejudice or popular misconception against lawyers, in order to carry a point against a brother attorney.

10. Nothing has been more potential in creating and pandering to popular prejudice against lawyers as a class, and withholding from the profession the full measure of public esteem and confidence which belong to the proper discharge of its duties, than the false claim, often set up by the unscrupulous in defense of questionable transactions, that it is an attorney's duty to do everything to succeed in his client's cause.

An attorney "owes entire devotion to the interest of his client, warm zeal in the maintenance and defense of his cause, and the exertion of the utmost skill and ability," to the end that nothing may be taken or withheld from him save by the rules of law legally applied. No sacrifice or peril, even to loss of life itself, can absolve from the fearless discharge of this duty. Nevertheless, it is steadfastly to be borne in mind that the great trust is to be performed within and not without the bounds of the law which creates it. The attorney's office does not destroy man's accountability to his Creator, or lessen the duty of obedience to law and the obligation to his neighbor; and it does not permit, much less demand, violation of law or any manner of fraud or chicanery for the client's sake.

11. Attorneys should fearlessly expose before the proper tribunals corrupt or dishonest conduct in the profession; and there should never be any hesitancy in accepting employment against an attorney who has wronged his client.

12. An attorney appearing or continuing as private counsel in the prosecution for a crime of which he believes the accused innocent, forswears himself. The State's attorney is criminal if he presses for a conviction, when upon the evidence he believes the prisoner innocent. If the evidence is not plain enough to justify a nolle prosequi, a public prosecutor should submit the case, with such comments as are pertinent, accompanied by a candid statement of his own doubts.

13. An attorney cannot reject the defense of a person accused of a criminal offense because he knows or believes him guilty. It is his duty by all fair and lawful means to present such defenses as the law of the land permits, to the end that no one may be deprived of his life or liberty but by due process of law.

14. An attorney must decline in a civil cause to conduct a prosecution, when satisfied that the purpose is merely to harrass or injure the opposite party, or to work oppression and wrong.

15. It is a bad practice for an attorney to communicate or argue privately with the judge as to the merits of his cause.

16. Newspaper advertisements, circulars and business cards, tendering professional services to the general public, are proper, but special solicitation of particular individuals to become clients is disreputable. Indirect advertisements for business, by furnishing or inspiring editorials or press notices regarding causes in which the attorney takes part, the manner in which they were conducted, the importance of his positions, the magnitude of

the interests involved, and all other like self-laudation is of evil tendency and wholly unprofessional.

17. Newspaper publications by an attorney as to the merits of pending or anticipated litigation call forth discussion and reply from the opposite party, tend to prevent a fair trial in the courts, and otherwise prejudice the due administration of justice. It requires a strong case to justify such publications, and when proper it is unprofessional to make them anonymously.

18. When an attorney is witness for his client, except as to formal matters, such as the attestation or custody of an instrument and the like, he should leave the trial of the cause to other counsel. Except when essential to the ends of justice, an attorney should scrupulously avoid testifying in court in behalf of his client as to any matter.

19. Assertions, sometimes made by counsel in argument, of a personal belief of the client's innocence or the justice of his cause, are to be discouraged.

20. It is indecent to hunt up defects in titles, and the like, and inform thereof, in order to be employed to bring suit; or to seek out a person supposed to have a cause of action and endeavor to get a fee to litigate about it. Except where ties of blood, relationship or trust make it an attorney's duty, it is unprofessional to volunteer advice to bring a law suit. Stirring up strife and litigation is forbidden by law and disreputable in morals.

21. Communications and confidence between clients and attorneys are the property and secrets of the client, and cannot be divulged except at his instance; even the death of his client does not absolve the attorney from his obligation of secrecy.

22. The duty not to divulge the secrets of clients extends further than mere silence by the attorney and forbids accepting retainers or employment afterwards from others involving the client's interest in the matters about which the confidence was reposed. When the secrets or confidence of a former client may be availed of or be material in a subsequent suit, as a basis of any judgment which may injuriously affect his rights, the attorney can not appear in such cause without the consent of his former client.

23 An attorney can never attack an instrument or paper drawn by him for an infirmity apparent on its face; nor for any other cause where confidence has been reposed as to the facts concerning it. Where the attorney acted as a mere scrivener, and was not consulted as to the facts, and, unknown to him, the transaction amounted to a violation of the law, he may assail it on that ground, in suits between third persons or between parties to the instrument and strangers.

24. An attorney, openly and in his true character, may render purely professional services before committees regarding proposed legislation, and in advocacy of claims before departments of the government, upon the same principles of ethics which justify his appearance before the courts; but it is immoral and illegal for an attorney so engaged to conceal his attorneyship, or to employ secret personal solicitations, or to use means other than those addressed to the reason or understanding, to influence action.

25. An attorney can never represent conflicting interests in the same suit or transaction, except by express consent af all concerned, with full knowledge of the facts. Even then such opposition is embarrassing and ought to be avoided. An attorney represents conflicting interests, within the meaning of the rule, when it is his duty. in behalf of one of his clients, to contend for that which duty to other clients in the transaction requires him to oppose.

26. "It is not desirable professional reputation to live and die with—that of a rough tongue, which makes a man to be sought and retained to gratify the malevolent feeling of a suitor, in hearing the other side well lashed and vilified."

27. An attorney is under no obligation to minister to the malevolence or prejudice of a client in the trial or conduct of a cause. The client can not be made the keeper of an attorney's conscience in professional matters. He can not demand as of right that his attorney shall abuse the opposite party, or indulge in offensive personalities. The attorney, under the solemnity of his oath, must determine for himself whether such a course is essential to the ends of justice, and therefore justifiable.

28. Clients, and not their attorneys, are the litigants, and whatever may be the ill feeling existing between clients, it is unprofessional for attorneys to partake of it in their conduct and demeanor to each other, or to suitors in the case.

29. In the conduct of litigation and the trial of causes, the attorneys should try the merits of the cause, and not try each other. It is not proper to allude to, or comment upon, the personal history or mental or physical peculiarities or idiosyncrasies of opposite counsel.

Personalities should always be avoided, and the utmost courtesy always extended to an honorable opponent.

30. As to incidental matters pending the trial, not affecting the merits of the cause, or working substantial prejudice to the rights of the client, such as forcing the opposite attorney to trial when he is under affliction or bereavement; forcing the trial on a particular day to the serious injury of the opposite attorney, when no harm will result from a trial at a different time; the time allowed for signing a bill of exceptions, crossing interrogatories and the like, the attorney must be allowed to judge. No client has a right to demand that his attorney shall be illiberal in such matters, or that he should do anything therein repugnant to his own sense of honor and propriety; and if such a course is insisted on, the attorney should retire from the cause.

31. The miscarriage to which justice is subject and the uncertainty of predicting results admonish attorneys to beware of bold and confident assurances to clients, especially where the employment depends upon the assurance, and the case is not plain.

32. Prompt preparation for trial, punctuality in answering letters and keeping engagements, are due from an attorney to his client, and do much to strengthen their confidence and friendship.

33. An attorney is in honor bound to disclose to the client at the time of retainer all the circumstances of his relation to the parties, or interest or connection with the controversy which might justly influence the client in the selection of his attorney. He must decline to appear in any cause where his obligations or relations to the opposite parties will hinder or seriously embarrass the full and fearless discharge of all his duties.

34. An attorney should endeavor to obtain full knowledge of his client's cause before advising him, and is bound to give him a candid opinion of the merits and probable result of his cause. When the controversy will admit of it, he ought to seek to adjust it without litigation, if practicable.

35. Money or other trust property coming into the possession of the attorney should be promptly reported, and never commingled with his private property or used by him, except with his client's knowledge and consent.

36. Attorneys should, as far as possible, avoid becoming either borrowers or creditors of their clients; and they ought scrupuously to refrain from bargaining about the subject-matter of the litigation, so long as the relation of attorney and client continues.

37. Natural solicitude of clients often prompts them to offer assistance of aditional counsel. This should not be met, as it sometimes is, as evidence of want of confidence; but, after advising frankly with the client, it should be left to his determination.

38. Important agreements affecting the rights of clients should, as far as possible, be reduced to writing; but it is dishonorable to avoid performance of an agreement fairly made, because not reduced to writing, as required by rules of court.

39. Attorneys should not ignore known customs of practice of the bar of a particular court, even when the law permits, without giving opposing counsel timely notice.

40. An attorney should not attempt to compromise with the opposite party without notifying his attorney if practicable.

41. When attorneys jointly associated in a cause can not agree as to any matter vital to the interest of their client, the course to be pursued should be left to his determination. The client's decision should be cheerfully acquiesced in, unless the nature of the difference makes it impracticable for the attorney to co-operate heartily and effectively, in which event it is his duty to ask to be discharged.

42. An attorney ought not to engage in discussion or argument about the merits of the case with the opposite party without notice to his attorney.

43. Satisfactory relations between attorney and client are best preserved by a frank and explicit understanding at the outset as to the amount of the attorney's compensation, and, where it is possible, this should always be agreed on in advance.

44. In general, it is better to yield something to a client's dissatisfaction at the amount of the fee, though the sum be reasonable, than to engage in a lawsuit to justify it, which ought always to be avoided except as a last resort to prevent imposition and fraud.

45. In fixing fees the following elements should be considered—1st. The time and labor required, the noevlty and difficulty of the questions involved, and the skill requisite properly to conduct the cause. 2nd. Whether the particular case will debar the attorney's appearance for others in cases likely to arise out of the transaction, and in which there is a

reasonable expectation that the attorney would otherwise be employed, and herein of the loss of other business while employed in the particular case, and the antagonism with other clients growing out of the employment. 3d, The customary charges of the bar for similar services. 4th, The real amount involved and the benefit resulting from the service. 5th, Whether the compensation was contingent or assured. 6th, Is the client a regular one, retaining the attorney in all his business? No one of these considerations is in itself controlling. They are mere guides in ascertaining what the service was really worth; and in fixing the amount it should never be forgotten that the profession is a branch of the administration of justice and not a mere money-getting trade.

46. Contingent fees may be contracted for, but they lead to many abuses, and certain compensation is to be preferred.

47. Casual and slight services should be rendered without charge by one attorney to another in his personal cause, but when the service goes beyond this, an attorney may be charged as other clients. Ordinary advice and services to the family of a deceased attorney should be rendered without charge, in most instances, and where the circumstances make it proper to charge, the fees should generally be less than in case of other clients.

48. Witnesses and suitors should be treated with fairness and kindness. When essential to the ends of justice to arraign their conduct or testimony, it should be done without vilification or unnecessary harshness. Fierceness of manner and uncivil behavior can add nothing to the truthful dissection of a false witness's testimony, and often rob deserved strictures of proper weight.

49. It is the duty of the court and its officers to provide for the comfort of the jurors. Displaying special concern for their comfort, and volunteering to ask favors for them, while they are present—such as frequent motions to adjourn trials, or take a recess, solely on the ground of the jury's fatigue or hunger, the uncomfortableness of their seats or the court room, and the like—should be avoided. Such intervention of attorneys, when proper, ought to be had privately with the court, whereby there will be no appearance of fawning upon the jury, nor ground for ill-feeling of the jury toward the court or opposite counsel if such requests are denied. For like reasons one attorney should never ask another in the presence of the jury to consent to its discharge or dispersion; and when such a request is made by the court, the attorneys without indicating their preference, should ask to be heard after the jury withdraws. And all propositions from counsel to dispense with argument should be made and discussed out of the hearing of the jury.

50. An attorney ought never to converse privately with jurors about the case, and must avoid all unnecessary communication, even as to matters foreign to the cause, both before and during the trial. Any other course, no matter how blameless the attorney's motives, gives color for imputing evil designs, and often leads to scandal in the administration of justice.

51. An attorney assigned as counsel for an indigent prisoner ought not to ask to be excused for any light cause, and should always be a friend to the defenseless and oppressed.

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Kunst, G. H. A. ..... Grafton.

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McWhorter, H. C. ..... Charleston.

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McWhorter, J. M. ..... Lewisburg.

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Nesbitt, Frank W. ..... Wheeling.
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Nuckolls, E. L. ..... Fayetteville.

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Reed, T. N. ..... Hinton.
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Reynolds, F. M. ..... Keyser.
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Ritz, H. A. ..... Bluefield.
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Robinson, Ira E. ..... Grafton.
Rucker, H. Scott, ... Huntersville.
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Sheppard, J. A. ..... Williamson.
Showalter, E. M. ..... Fairmont
Shrewsbury, G. H. ..... Charleston.
Simms, H. C. ..... Huntington.
Simpson, J. Coleman ..... Moundsville.
Smith, Chas. A. ..... Parkersburg.
Smith, E. G. ..... Clarksburg.
Smith, Harvey F. ..... Clarksburg.
Smith, Levin ..... Parkersburg.
Smith, S. G. ..... Wheeling.
Snider, Millard, F. ..... Clarksburg.
Sommerville, J. B. ..... Wheeling.
Spencer, J. S. ..... Point Pleasant.
Sperry, M. G. ..... Clarksburg.
Sperry, Clarence ..... Clarksburg.
Spilman, R. S. ..... Charleston.
Staples, Waller ..... Roanoke, Va.
Stewart, Edgar B. ..... Morgantown.
Stewart, Terrence D. ..... Morgantown.
Stifel, L. F. ..... Wheeling.
Stiles, M. F. ..... Charleston.
Stokes, W. H. ..... Welch.
Stout, W. Frank ..... Clarksburg.
Strader, J. F. ..... Beverly.
Straus, W. M. ..... Parkersburg.
Strickling, Jas. H. ..... Middlebourne.
Strieby, C. O. ..... Davis.

Talbott, E. D. ..... Elkins.
Taylor, Blaine W. ..... Elkins.
Teter, C. F. ..... Philippi.
Thompson, W. R. ..... Huntington.

Thurmond, H. C. ..... Madison.
Turner, S. D. ..... [illegible]aburg.

Valantine, A. J. ..... [illegible]rsons.
Vandale, J. A. A. ..... [illegible]ncer.
Vandervort, J. W. ..... Pat[illegible]rg.
Van Sickle, H. L. ..... L[illegible]g.
Van Winkle, W. W. ..... Park[illegible]rg.
Vinson, Z. T. ..... Hun[illegible]on.

Walker, Stewart W. ..... Martin[illegible]
Watts, C. C. ..... Charl[illegible]
Wehrle, John ..... Charl[illegible]
Wells, Ross ..... St. M[illegible]
Westenhaver, D. C. ..... Cleveland, O[illegible]
White, Robert ..... Wheel[illegible]
White, J. B. ..... Charlest[illegible]
Whitten, Jno. L. ..... Point Pleasa[illegible]
Willey, W. P. ..... Morgantow[illegible]
Williams, Homer W. ..... Clarksburg.
Williams, L. J. ..... Lewisburg.
Willis, M. H. ..... West Union.
Wilson, E. W. ..... Charleston.
Wilson, W. G. ..... Elkins.
Wingerter, Ferdinand ..... Wheeling.
Wolfe, W. H. Jr. ..... Parkersburg.
Wooddell, W. L. ..... Webster Springs.
Woods, H. B. ..... Harrisville.
Woods, J. Hop ..... Philippi.
Woods, J. M. ..... Martinsburg.
Woods, Samuel V. ..... Philippi.
Young, U. G. ..... Buckhannon.

LIST OF MEMBERS BY COUNTIES.

Barbour County

Byrer, Harry H. ..... Philippi.
Dayton, A. G. ..... Philippi.
George, W. T. ..... Philippi.
Ice, W. T., Jr. ..... Philippi.
Murphy, C. M. ..... Philippi.
Teter, C. F. ..... Philippi.
Woods, J. Hop ..... Philippi.
Woods, Samuel V. ..... Philippi.

Berkeley County.

Faulkner, C. J. ..... Martinsburg.
Faulkner, E. Boyd ..... Martinsburg.
Kilmer, W. C. ..... Martinsburg.
Lindsay, Ward B. ..... Martinsburg.
Martin, Clarence E. ..... Martinsburg.
Nadenbousch, A. C. ..... Martinsburg.
Noll, Allen B. ..... Martinsburg.
Poole, X. ..... Martinsburg.
Walker, Stewart W. ..... Martinsburg.
Woods, J. M. ..... Martinsburg.

Boone County.

Leftwich, F. C. ..... Madison.

Braxton County.

Fisher, Jake ..... Sutton.
Haymond, Wm. E. ..... Sutton.

Brooke Co.

Hervey, Henry C. ..... Wellsburg.
Palmer, John C. Jr. ..... Wellsburg.

Cabell County.

Baker, R. M. ..... Huntington.
Doolittle, Edw. S. ..... Huntington.
Enslow, F. B. ..... Huntington.
Mathews, D. E. ..... Huntington.
Northcott, Elliott ..... Huntington.
Simms, H. C. ..... Huntington.
Thompson, W. R. ..... Huntington.
Vinson, Z. T. ..... Huntington.

Calhoun County

Hamilton, J. M. ..... Grantsville.

Clay County.

Davenport, H. B. ..... Clay.

Doddridge County.

Blair, J. V. ..... West Union.
Brown, W. R. ..... West Union.
Willis, M. H. ..... West Union.

Fayette County.

Dillon, C. W. ..... Fayetteville.
Hamilton, A. W. ..... Fayetteville.
Hubbard, Robt. T., Jr. ..... Fayetteville.
Koontz, J. K. ..... Ansted.
McPeak, E. M. ..... Fayetteville.
Nuckolls, E. L. ..... Fayetteville.
Osenton, Chas. W. ..... Fayetteville.
Poteet, L. E. ..... Fayetteville.

Greenbrier County.

Dice, Chas S. ..... Lewisburg.
McWhorter, J. M. ..... Lewisburg.
Preston, John A. ..... Lewisburg.
Van Sickle, H. L. ..... Lewisburg.
Williams, L. J. ..... Lewisburg.

Hampshire County.

Cornwell, John J. ..... Romney.
Dailey, R. W. ..... Romney
Gilkeson, H. B. ..... Romney.

Hancock County.

Marshall, O. S. ..... New Cumberland.

Hardy County.

Dailey, Benj., ... Moorfield.

Harrison County.

Altizer, R. G. ..... Clarksburg.
Bassel, John ..... Clarksburg.
Criles, L. C. ..... Clarksburg.
Davis, John J. ..... Clarksburg.
Davis, John W. ..... Clarksburg.
Douglass, W. S. ..... Clarksburg.
Gore, C. W. ..... Clarksburg
Harmer, Harvey W. ..... Clarksburg.
Houston, H. T. ..... Clarksburg.
Johnson, Chas. B. ..... Clarksburg.
Law, Jas. E. ..... Clarksburg.
Lynch, C. W. ..... Clarksburg.
Maxwell, Haymond ..... Clarksburg.
Scott, W. ..... Clarksburg.
Smith, E. G. ..... Clarksburg.
Smith, Harvey F. ..... Clarksburg.
Snider, Millard F. ..... Clarksburg.
Sperry, M. G. ..... Clarksburg.
Sperry, Clarence B. ..... Clarksburg.
Stout, W. Frank ..... Clarksburg.
Williams, Homer W. ..... Clarksburg.

Jefferson County.

Brown, Forest W. ..... Charles Town.
Gibson, Braxton, D. ..... Charles Town.
Jeffords, Tracy L. ..... Harper's Ferry (Washington, D. C.)
Lucas, D. B. ..... Charles Town.
McDonald, Angus W. ..... Charles Town.
McMahon, Richard R. ..... Harper's Ferry.

Jackson County.

Brown, C. L. ..... Ravenswood.
Prickett, N. C. ..... Ravenswood.

Kanawha County.

Alderson, Chas. M.	Charleston.
Anderson, H. M.	Charleston.
Ashby, W. L.	Charleston.
Atkinson, G. W.	Charleston.
Avis, S. B.	Charleston.
Black, V. L.	Charleston.
Briggs, Murray	Charleston.
Broun, Thos. L.	Charleston.
Brown, J. F.	Charleston.
Burdette, S. C.	Charleston.
Burlew, B. L.	Charleston.
Buster, H. B.	Charleston.
Cato, H. S.	Charleston.
Chilton, W. E.	Charleston.
Clay, Buckner	Charleston.
Dawson, W. M. O.	Charleston.
Flournoy, R. P.	Charleston.
Greene, S. S.	Charleston.
Hall, Grant P.	Charleston.
Jackson, Malcolm	Charleston.
Knight, E. W.	Charleston.
La Follette, L. M.	Charleston.
Linn, R. G.	Charleston.
Loeb, Leo	Charleston.
Mathews, W. B.	Charleston.
Mathews, W. G.	Charleston.
Mathews, Daniel	Charleston.
Mollohan, W.	Charleston.
McClintic, G. W.	Charleston.
McDonald, Angus W.	Charleston.
Mac Ra, Duncan	Charleston.
McWhorter, H. C.	Charleston.
Payne, W. Dallas	Charleston.
Price, Geo. E.	Charleston.
Quarrier, R. A.	Charleston.
Shrewsbury, G. H.	Charleston.
Spilman, R. S.	Charleston.
Stiles, M. F.	Charleston.
Watts, C. C.	Charleston.
Wehrle, Jno.	Charleston.
White, John B.	Charleston.
Wilson, E. W.	Charleston.

Lewis County.

Bennett, J. B.	Weston.
Bennett, W. G.	Weston.
Bland, Robt. L.	Weston.
Brannon, W. W.	Weston.
Bunting, J. G.	Weston.
Edmiston, Andrew	Weston.

Lincoln County.

May, Clark W.	Hamlin.

Marion County.

Arnett, U. N.	Fairmont.
Butcher, B. L.	Fairmont.
Cornwell, W. B.	Fairmont.
Lehman, Jno. L.	Fairmont.
Lehman, A. L.	Fairmont.
Martin, F. T.	Fairmont.
Mason, John W.	Fairmont.
Showalter, E. M.	Fairmont.

Marshall County.

Evans, D. B.	Moundsville.
Holt, J. Howard	Moundsville.
Mann, W. C.	Moundsville.
Meighen, B. F.	Moundsville.
McCamic, Chas.	Moundsville.
Simpson, J. Coleman	Moundsville.

Mason County.

Hogg, Chas. Edgar	Point Pleasant.
Poffenbarger, Geo. C.	Point Pleasant.

Spencer, J. S. ..... Point Pleasant.
Whitten, Jno. L. ..... Point Pleasant.

Mercer County.

Keller, B. F. ..... Bramwell.
Ritz, H. A. ..... Bluefield.
Sanders, J. M. ..... Bluefield.

Mineral County.

Clayton, W. C. ..... Keyser.
Drane, Henry K. ..... Keyser.
McDonald, Wm. ..... Keyser.
Reynolds, F. M. ..... Keyser.

Mingo County.

Goodykoontz, Wells ..... Williamson.
Sheppard, J. A. ..... Williamson.

Monongalia County.

Brooke, St. Geo. T. ..... Morgantown.
Cox, Frank ..... Morgantown.
Cramer, C. W. ..... Morgantown.
Frazer, Jas. C. ..... Morgantown.
Glasscock, S. F. ..... Morgantown.
Glasscock, Wm. E. ..... Morgantown.
Moreland, Joseph ..... Morgantown.
Reay, D. C. ..... Morgantown.
Stewart, Edgar B. ..... Morgantown.
Stewart, Terrence D. ..... Morgantown.
Willey, W. P. ..... Morgantown.

Monroe County.

Campbell, A. N. ..... Union.
Logan, J. D. ..... Union.

Morgan County.

Bayer, Harry W. ..... Berkeley Springs.
McIntire, Aloysius C. ..... Berkeley Springs

McDowell County.

Anderson, L. C. ..... Welch.
Henritze, T L. ..... Welch.
Rucker, E. P. ..... Welch.
Stokes, W. H. ..... Welch.

Nicholas County.

Alderson, John D. ..... Summersville.
Horan, A. J. ..... Summersville.
Horan, T. B. ..... Summersville.

Ohio County.

Addleman, R. M. ..... Wheeling.
Allen, G. R. C. ..... Wheeling.
Allison, B. S. ..... Wheeling.
Arbens, Jno. P. ..... Wheeling.
Boyd, Geo. E. ..... Wheeling.
Caldwell, Alfred ..... Wheeling.
Caldwell, Geo. B. ..... Wheeling.
Clarke, A. J. ..... Wheeling.
Coniff, John J. ..... Wheeling.
Cox, Frank C. ..... Wheeling.
Dovener, B. B. ..... Wheeling.
Ewing, Jas. W. ..... Wheeling.
Fickelson, A. G. ..... Wheeling.
Flick, C. P. ..... Wheeling.
Garvin, T. M. ..... Wheeling.
Gilchrist, Geo. R. E. ..... Wheeling.
Hearne, Wm. H. ..... Wheeling.
Howard, John A. ..... Wheeling.
Hubbard, Nelson C. ..... Wheeling.
Hubbard, Wm. P. ..... Wheeling.
Mac Mahon, Frank A. ..... Wheeling.
Melvin, Thayer, ... Wheeling.
Meyer, W. C. ..... Wheeling.
Moore, Sheridan ..... Wheeling.
Morris, C. E. ..... Wheeling.

Naylor, Joseph R. ..... Wheeling.
Nesbitt, Frank W. ..... Wheeling.
Reymann, Lawrence A. ..... Wheeling.
Richards, H. C. ..... Wheeling.
Riley, T. S. ..... Wheeling.
Russell, H. M. ..... Wheeling.
Sawtelle, A. L. ..... Wheeling.
Smith, S. G. ..... Wheeling.
Sommerville, J. B. ..... Wheeling.
Stifel, L. F. ..... Wheeling.
White, Robert ..... Wheeling.
Wingerter, Ferdinand ..... Wheeling.

Pendleton County.

Hodges, M. S. ..... Franklin.

Pleasants County.

Barron, J. F. ..... St. Marys.
Johnson, Clyde B. ..... St. Marys.
Wells, Ross ..... St. Marys.

Pocahontas County.

McClintic, L. M. ..... Marlington.
Price, Andrew ..... Marlington.
Rucker, H. Scott ..... Huntersville.

Preston County.

Brown, Wm. G. Jr. ..... Kingwood.
Crogan, P. J. ..... Kingwood.
McCrum, A. Bliss ..... Kingwood.

Raleigh County.

Preston, A. D. ..... Beckley.

Randolph County.

Dailey, C. W. ..... Elkins.
Strader, J. F. ..... Beverly.
Talbott, E. D. ..... Elkins.
Taylor, Blaine W. ..... Elkins.
Wilson, W. G. ..... Elkins.

Ritchie County.

Freer, Romeo H. ..... Harrisville.
Woods, H. B. ..... Harrisville.

Roane County.

Chambers, O. J. ..... Spencer.
Pendleton, Walter ..... Spencer.
Vandall, Jr. A. A. ..... Spencer.

Summers County.

Daley, A. D. ..... Hinton.
Dunlap, R. F. ..... Hinton.
Miller, J. H. ..... Hinton.
Reed, T. N. ..... Hinton.

Taylor County.

Bailey, Benj. F. ..... Grafton.
Burdette, A. W. ..... Grafton.
Dent, M. H. ..... Grafton.
Dent, W. R. D. ..... Grafton.
Holt, John Homer ..... Grafton.
Kunst, G. H. A. ..... Grafton.
McGraw, John T. ..... Grafton.
Post, Melville D. ..... Grafton.
Robinson, Ira E ..... Grafton.

Tucker County.

Conley, W. G. ..... Parsons.
Cunningham, A. M. ..... Davis.
Strieby, C. O. ..... Davis.
Valentine, A. J. ..... Parsons.

Tyler County.

Blackmarr, F. L. ..... Sistersville.

Hardman, O. W. O. ..... Middlebourne.
Strickling, Jas. H. ..... Middlebourne.

Upshur County.

Cutwright, W. B. ..... Buckhannon.
Fleming, G. M. ..... Buckhannon.
Higginbotham, C. C. ..... Buckhannon.
McWhorter, J. C. ..... Buckhannon.
Pifer, Felix C. ..... Buckhannon.
Poundstone, A. M. ..... Buckhannon.
Young, U. G. ..... Buckhannon.

Webster County.

Dorr, C. P ..... Addison.
Hoover, Jno. M. ..... Addison.
Thurmond, H. C. ..... Addison.
Wooddell, W. L. ..... Addison.

Wetzel County.

Bowers, Basil T. ..... New Martinsville.
Clark, F. W. ..... New Martinsville.
Cornett, F. C. ..... New Martinsville.
Hall, S. B. ..... New Martinsville.
Hall, Wm. McG. ..... New Martinsville.
Jacobs, T. P. ..... New Martinsville.
Robinson, E. L. ..... New Martinsville.

Wirt County.

Brown, T. A. ..... Elizabeth.

Wood County.

Ambler, B. M. ..... Parkersburg
Ambler, M. G. ..... Parkersburg.
Blizzard, Reese ..... Parkersburg.
Bullock, T. O. ..... Parkersburg.
Caldwell, J. Mentor ..... Parkersburg.
Camden, H. P. ..... Parkersburg.
Cooper, John T. ..... Parkersburg.
Ireland, A. D. ..... Parkersburg.
Jackson, W. W. ..... Parkersburg.
Johnson, Geo. W. ..... Parkersburg.
Kreps, C. A. ..... Parkersburg.
Laird, Jno. F. ..... Parkersburg.
Leonard, Dan B. ..... Parkersburg.
Merrick, C. D. ..... Parkersburg.
Miller, W. N. ..... Parkersburg.
Moats, F. P. ..... Parkersburg.
Morris, Presley W. ..... Parkersburg.
Moss, Hunter H., Jr. ..... Parkersburg.
McCluer, Jas. S. ..... Parkersburg.
Patton, A. G. ..... Parkersburg.
Peterkin, Wm. G. ..... Parkersburg.
Smith, Chas. A. ..... Parkersburg.
Smith, Levin ..... Parkersburg.
Straus, Wm. M. ..... Parkersburg.
Turner, S. D. ..... Parkersburg.
Vandervort, J. W. ..... Parkersburg.
Van Winkle, W. W. ..... Parkersburg.
Wolfe, W. H. Jr. ..... Parkersburg.

Cleveland, Ohio.
Westenhaver, D. C.
Columbus, Ohio,
Hamill, Jas. L.
Roanoke, Va.
Hunt, A. B.
Staples, Waller.
Windsor, Nova Scotia.
Hoke, J. T.

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